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TRANSCRIPT OF RECORD.

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE

THIRD CIRCUIT

March

1900

WANK

DISTRICT OF

MARCH 12, 1900

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October Session, 1900.

Frank G. Morse.

FRANK SEAMAN.

EX.

Frank P. Prichard.

ELDRIDGE R. JOHNSON.

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1900, October 22. Bill in Equity and affidavits in support of injunction filed.

1900, October 22. Subpoena issued returnable first Monday of November next.

1900, October 22. Restraining order issued.

1900, October 26. Argued sur motion to modify restraining order.

1900, October 26. Order modifying order of October 22, 1900.

1900, October 30. Affidavits and exhibits on behalf of complainant filed.

1900, November 2. Frank P. Prichard, Esq., appears for deft.

1900, November 5. Subpoena returned served with copy of bill, on October 22, 1900.

1900, November 28. Printed copy of bill, affidavit and exhibits filed.

1900, December 17. Argued sur motion for preliminary injunction.

1900, December 20. Defendant's affidavits and exhibits filed.

1901, March 1. Opinion Gray, Cir. J., granting preliminary injunction in accordance with the fourth prayer of bill filed.

1901, March 7. Decree for injunction.

1901, March 7. Order staying injunction upon filing bond in sum of five hundred dollars.

1901, March 7. Petition for appeal filed and allowed.

1901, March 7. Assignments of error filed.

1901, March 8. Bond sur appeal for five hundred dollars and twenty-five hundred dollars approved and filed.

1901, March 8. Citation allowed and issued.

1901, March 9. Citation returned, service accepted.

IN THE CIRCUIT COURT OF THE UNITED STATES IN
AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

20. October, 1900.

FRANK SEAMAN,

vs.

ELDRIDGE R. JOHNSON.

Pleas and proceedings before the Honorable, the Judges of the Circuit Court of the United States in and for the Eastern District of Pennsylvania.

It is thus contained:

Be it remembered, that on the 22d day of October, 1900, the complainant by his counsel comes into our Court here and files his bill of complaint against respondent, which being read is in the following words and figures following, to wit:

UNITED STATES.
EASTERN DISTRICT OF PENNSYLVANIA. } ss.

THE PRESIDENT OF THE UNITED STATES.

To Eldridge R. Johnson.

For certain causes offered before the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit, we command and strictly enjoin you, that laying all other matters aside and notwithstanding any excuse, you personally do and appear before the Judges of the said Court, at a session of the same Court, to be holden at Philadelphia, on the first Monday of December next, to answer concerning those things which shall then and there be objected against you, and to do further and receive what the said Court shall have considered in this behalf. And have you then there this writ. And this you are in nowise to omit, under the penalty of four hundred dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 22d day of October, 1900, and in the one hundred and twenty-fifth year of Independence of the said United States.

GEORGE BRODBECK, Jr.,

Pro Clerk of Circuit Court, U.S.

Note.—The defendant in this case is required to enter his appearance in the Clerk's Office of said Court, on or before the first Monday of December next, otherwise this bill may be taken pro confesso.

October 22d, 1900.

At Philadelphia, in my District, served the within writ on Eldridge R. Johnson by giving him a true and attested copy thereof and making known the contents of the same to him, also at same time handing a copy of Bill of Complaint, affidavits, etc., also a copy of Returnable Order.

So answers,

JOHN B. ROBINSON, U. S. Marshal.
Per ABRAM B. MYERS, Deputy.

Endorsed: No. 20. Circuit Court, October Session, 1900. Frank Johnson vs. Eldridge R. Johnson. Subpoena in Equity. Returnable on the first Monday of December next. Waldo G. Morse, Solicitor for Complainant. Filed November 5, 1900. Samuel Bell, Clerk.

No. 20. October Sessions, 1900.

IN THE
Circuit Court of the United States
IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

Frank Seaman, Plaintiff,

vs.

Eldridge R. Johnson, Defendant.

BILL IN EQUITY AND EXHIBITS.

WALDO G MORSE,
Solicitor for Plaintiff,
No. 10 Wall Street,
New York, N. Y.

RUSSELL DUANE,
Of Counsel.

Filed October 22d, 1900.

SAMUEL BELL,
Per G. B., JR.,
Clerk.

Allen, Lane & Scott, Pitt. Phila.

Filed
Nov 28-1900
Samuel Bell
Clerk

5.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

<i>Frank Seaman, Plaintiff,</i> <i>against</i> <i>Eldridge R. Johnson, Defendant.</i>	}	October Sessions, 1900. No. 20.
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TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF PENNSYLVANIA:

Frank Seaman, a citizen of the State of New York, residing in the city of Yonkers, in said State, brings this his bill against Eldridge R. Johnson, a citizen of the State of Pennsylvania, residing in the city of Philadelphia, in said State, and thereupon your orator complains and says:—

I. That the defendant is, and during the times herein set forth has been, engaged in the manufacture of a certain patented article and device known as the "gramophone"; and that during said several years last past the defendant has manufactured such machines exclusively for the Berliner Gramophone Company, a corporation organized under and pursuant to the laws of the State of Virginia, and has placed the patent marks of said company thereupon, and has in all respects recognized the validity of said patents, the same being hereinafter more particularly and at length set forth, and that such machines so manufactured were supplied to said company directly during a portion of said time and through the orders of your orator during other portions thereof.

That during such time the defendant was employed by said Berliner Gramophone Company to perfect and make for it and at its expense various machines. And your orator is informed and believes and charges the fact to be;

II. That the defendant was employed by the said Berliner Gramophone Company to perfect and develop for it and at its expense certain improvements and modifications in said machines and certain methods for producing records therefor and had and acquired certain machinery and appliances for the use and benefit of said company, all of which were fully paid for by said company and became its property, and that of the contracts, matters, things, and relations hereinafter set forth the defendant is, and at all the times herein referred to has been, fully advised, and has had full and complete notice of all the contracts, rights, and privileges of your orator.

III. That the Consolidated Talking Machine Company of America is a corporation chartered and organized under and by virtue of the laws of the State of New Jersey, and having its principal office and place for the transaction of business in the city of Camden, in said State.

IV. That on or about the second day of September, 1895, the United States Gramophone Company, a corporation organized under the laws of the State of West Virginia, which said corporation was then the owner of certain patents upon talking machines and sound-reproducing devices, granted to one Emil Berliner; as licensor entered into a certain agreement in writing dated on that day, with one William C. Jones, of New York City, wherein and whereby it assigned, transferred, and set over to said Jones as licensee the exclusive right to manufacture, sell, lease, and deal in said inventions upon the payment of certain royalties therein particularly set forth, and further provided that said Jones might form a company to assume, carry out, and be responsible for the said obligation, and that the same might thereupon be assigned to the said company, the obligation of the said Jones thereupon ceasing.

V. That thereafter, and on or about the 2d of September, 1895, said Emil Berliner entered into a certain contract or agreement with said William C. Jones, dated on that day, wherein and whereby he ratified said agreement aforesaid and covenanted to co-operate in the carrying out of the same.

VI. That thereafter an additional and further agreement was likewise entered into by and between the same parties dated on the fourth day of October, 1895, modifying the amounts payable under said contract, but leaving the same otherwise unchanged.

VII. That thereafter the Berliner Gramophone Company was incorporated under the laws of the State of Virginia, and said contracts and agreements were duly assigned and transferred to it, and it acquired the rights of said Jones thereunder, and entered upon the execution and performance of said contracts pursuant to the terms of the same.

VIII. That thereafter, and on or about the tenth day of October, 1896, your orator and the said Berliner Gramophone Company duly made and entered into a certain contract or agreement, dated on that day, a copy whereof, as well as of said agreements between the said United States Gramophone Company and said Jones, are hereto annexed, marked "Exhibit A," and made a part hereof, the original of said agreement of date October 10th, 1896, with copies of such other agreements being in the possession of your orator and ready to be produced to the court.

IX. That said agreement was duly sealed by the parties thereto with their respective seals, and was likewise signed in the name of said Berliner Gramophone Company by Thomas S. Parvin, its president, pursuant to a vote of its board of directors duly authorizing him so to do, and by your orator individually.

X. That said agreement of date October 10th, 1896, provided, among other things, that the said Berliner Gramophone

Company should manufacture solely for, and sell exclusively to, your orator, the gramophones and gramophone goods so as aforesaid controlled by it, and for the manufacture and sale whereof it held the exclusive license under the patents and contracts hereinbefore set forth, and that your orator should purchase large quantities thereof, and should sell and distribute the same, all as in and by said contract is fully and at length set forth.

XI. That under and by virtue of patents of the United States of America, as aforesaid, the said Berliner Gramophone Company possessed the sole and exclusive right to manufacture, vend, and use in the United States of America, as specified, the gramophones and gramophone goods aforesaid, which said right is in and by said agreement acknowledged and conceded by your orator, and is now, and for many years to come will be, the sole and exclusive property of said Berliner Gramophone Company, and as provided for by said agreement, that of your orator and of the various heirs, executors, administrators, successors, and assigns of the parties, as in and by said contract and by law is provided, the same being of great value.

XII. That said E. Berliner was the original, first, and sole inventor of the new and useful improvements in recording and reproducing speech and other sounds, which were the subject of the patents aforesaid and described therein, and the subject of the contract above set forth, and which improvements were not known or used by others in this country before his invention thereof, and were not patented or described in any printed publication in this or any foreign country before his invention thereof, and were not in public use or on sale in the United States for two years prior to his application for a patent thereof and which had not been abandoned.

XIII. That thereafter the said Emil Berliner made application in due form of law to the Commissioner of Patents for the grant of letters patent of the United States for the

said inventions, and for each of them, and then and there fully complied in all respects with the provisions and requirements of the laws of the United States in such case made and provided; and thereupon, due proceedings being had upon said applications, severally, letters patent of the United States, in due form of law, were issued and delivered to the said Emil Berliner in the name of the United States of America, under the seal of the Patent Office, and signed and countersigned by the proper patent officers of the United States, severally, as follows: No. 372,786, dated November 8th, 1887, for a gramophone; No. 382,790, dated May 15th, 1888, for a process of producing records of sound; No. 534,543, dated February 19th, 1895, for a gramophone; No. 548,623, dated October 29th, 1895, for an improvement in sound records and method of making same; and No. 564,586, dated July 28th, 1896, for a gramophone; and that the said letters patent did grant to the said Emil Berliner, his heirs and assigns, for a term of eighteen years from the time of the several dates, the exclusive right to make, use, and vend the said inventions throughout the United States and the territories thereof, as by reference to the said letters patent or a duly authenticated copy thereof, here in court to be produced, will more fully and at large appear.

XIV. And your orator further shows that by the instruments in writing annexed hereto and fully and at length set forth herein, the sole and exclusive right to so manufacture, use, and vend was transferred to the said Berliner Gramophone Company, and by it the sole and exclusive right, license, and privilege to buy, sell, and deal in the same was transferred to your orator, all as herein is elsewhere more fully and at length set forth; and that your orator, ever since the time of the execution of said agreements has been, and at the time of the commission of the acts hereinafter complained of was, and now is, the sole and exclusive owner of the rights and privileges in and by said agreements contained and conferred, and has been and is, save for the doings of this defendant and others acting in concert with him, in the exclusive possession of the said rights and privileges, and

is entitled to the exclusive use, benefits, and advantages of the said inventions and improvements, as aforesaid.

XV. And your orator is informed and believes, and charges the fact to be, that the defendant and others acting in concert with him, well knowing the premises since the grant of said letters patent, and since the acquiring by your orator of his rights therein and thereto, within the said Eastern District of Pennsylvania and elsewhere in the United States, wrongfully and unlawfully, and with the intent to injure your orator and with the intent to deprive him of the profits resulting from said invention, which profits otherwise would accrue to him from the practice of such inventions, and without the license or consent of your orator, have both made, used, and vended sound records and apparatus for recording and reproducing speech and other sounds, substantially as described in said letters patent Nos. 372,786, 382,790, 534,023, and 564,586, and that they still continue so to do, and are threatening to continue the aforesaid unlawful acts to a still larger extent, all in defiance of the rights secured to your orator aforesaid, and to his great and irreparable loss and injury, by which your orator has been and is still being deprived of great gains and profits that he would otherwise have obtained but for the aforesaid unlawful doings of the defendant; and your orator further shows that the said defendant has derived and received, and still is deriving and receiving, great gains and profits from such unlawful acts, but to what extent your orator is ignorant and cannot set forth, and therefore prays a discovery thereof.

XVI. And your orator further shows unto your Honors that the manufacture, use, and sale by said defendant of the apparatus aforesaid set forth in said patents, and his preparation for continuing, and his avowed determination to continue the same and other aforesaid unlawful acts, in disregard and defiance of the rights of your orator, have the effect to, and do, encourage and induce others to do likewise; that your orator and all persons making, under the authority of your orator or of any other person or persons

interested in said patents, apparatus for recording and reproducing sounds and sound records, employing, embodying, and operating, or made in accordance with the inventions described and claimed in the letters patent aforesaid, have given notice to the public that the same are patented, and have affixed thereto the word "patented," together with the day and year the said patents, respectively, were granted; and your orator further shows that the said defendant was duly informed of his infringement herein complained of, but refused to desist therefrom, and still continue so to do.

XVII. Your orator avers that when Emil Berliner invented the talking machine covered by the patents hereinbefore mentioned he invented and coined the arbitrary name "gramophone," and applied it to the said invention as descriptive of its origin and ownership, and by said name the said invention of the said Berliner at once became known, and so continues to be known at the present time, and the said Berliner thereby acquired a property right in it as a trade mark. Under assignments and licenses from the said Berliner the right to use the word "gramophone" is the exclusive property right of the United States Gramophone Company and the Berliner Gramophone Company, and through them, of your orator, and has been extensively used by him in trade in the United States and with foreign countries. The public generally have acquiesced in the right of your orator to the exclusive use of the said name, and in his title to the same, and your orator's rights in the premises have not been infringed since the coining and adoption of the said word by Berliner to the present time, with the exception of the infringing acts of the defendant. Your orator avers that the defendant, Eldridge R. Johnson, in using the said word in selling talking machines thereunder, has not only been guilty of unfair competition in trade, as hereinbefore fully set forth, but has maliciously and fraudulently violated and injured your orator's property right in said word as a trade mark.

XVIII. That upon and after the execution and delivery of said agreement with the Berliner Gramophone Company

your orator entered actively upon the business therein described, and agreed to be conducted, and at once engaged in carrying out the terms and provisions of the said agreement on his part specified to be performed, and purchased and paid for large amounts of goods manufactured by the said company under said patents and bearing the said name and delivered by it to your orator, pursuant to the terms of said agreement.

XIX. That in so doing your orator spent and caused to be spent great sums of money in advertising and introducing such goods and building up a market for the same, and purchased as aforesaid goods to the value of \$611,885.24. ✓

XX. That your orator has in all respects well and truly and according to the letter and spirit of said contract performed the same on his part, but that said Berliner Gramophone Company has failed and refused, and still refuses, to perform the same on its part.

XXI. That the said Berliner Gramophone Company has wholly failed and refused to perform its said contract on its part, and has neglected and refused, and still neglects and refuses, to deliver to your orator the gramophones and gramophone goods required by him in the performance of said contract.

XXII. That on the twenty-fifth day of June, 1900, your orator filed his bill of complaint in the Circuit Court of the United States for the Western District of Virginia against the said Berliner Gramophone Company, a copy of which bill is hereunto annexed and prayed to be read and taken as a part of this bill, marked "Exhibit B."

XXIII. That thereupon, on the said twenty-fifth day of June, 1900, an injunction was awarded by the Hon. John Paul, one of the judges of said court, as prayed for in part in said bill, a copy whereof is hereunto annexed and prayed to be read and taken as part hereof, marked "Exhibit C."

XXIV. That thereupon the said defendant, on the sixth day of August, 1900, appeared at Rules and filed its answer to said bill, a copy whereof is hereunto annexed and prayed to be read and taken as a part of this bill, marked "Exhibit D."

XXV. That thereupon, on the seventh day of August, 1900, the said defendant in said bill gave notice to your orator of a motion to be made on the seventeenth day of August, 1900, before the Hon. John Paul, one of the judges of said court, to dissolve the said injunction, and upon the hearing of said motion the same was docketed and continued; and thereupon further notice was given your orator by the said Berliner Gramophone Company of another motion to dissolve said injunction before the Hon. John Paul, one of the judges of said court, on the sixth day of September, 1900; and thereupon the said motion was heard, and from the sixth to the tenth day of September, and the court not then being advised of its conclusion, leave was granted counsel to file written arguments upon said motion on or before the twenty-fifth day of September, 1900; the said motion to dissolve said injunction was, as your orator is informed and believes, on the nineteenth day of October, in all things denied and said injunction continued until the final hearing of the cause.

XXVI. That on the twenty-fourth day of September, 1900, upon affidavits then considered by the court and upon the record of said cause in said Circuit Court of the United States for the Western District of Virginia, a rule was awarded by the Hon. John Paul, one of the judges of said court, returnable to the twenty-ninth day of September, 1900, against the said The Berliner Gramophone Company to show cause why the injunction theretofore granted by him should not be enlarged, a copy of which order is hereunto annexed and prayed to be taken and read as a part hereof, marked "Exhibit E."

XXVII. That thereupon, and on said twenty-ninth day of September, 1900, said defendant filed its answer to said

rule to show cause, a copy whereof is hereunto annexed, and prayed to be taken and read as part hereof, marked "Exhibit F."

XXVIII. Your orator further shows your Honors that, during the argument of said motion to dissolve said injunction on the tenth day of September, 1900, he instituted in the said Circuit Court of the United States for the Western District of Virginia, a suit in equity against the said Berliner Gramophone Company and the United States Gramophone Company, a copy of the bill in which case is hereunto annexed, marked "Exhibit G," and prayed to be taken and read as part hereof.

XXIX. That on the said twenty-ninth day of September, 1900, upon motion of the said defendant, United States Gramophone Company, the service of process upon it in said last-named suit was set aside on the ground, among others, that said defendant, the United States Gramophone Company, was not engaged in business in the State of Virginia.

XXX. That thereafter and thereupon a suit was entered against said United States Gramophone Company, in and for the District of West Virginia, wherein, and pursuant to the laws whereof, said corporation is organized; a copy of the bill in which suit is hereunto annexed, and prayed to be taken as a part hereof, marked "Exhibit II," wherein your orator was plaintiff and said United States Gramophone Company defendant.

XXXI. That in said action so as aforesaid entered in the United States Circuit Court for the District of West Virginia, and on or about the fourth day of October, 1900, upon the said bill and the exhibits accompanying the same, and upon motion of the complainant in said action, namely, your orator, Hon. John J. Jackson, one of the judges of said court, made an order, and thereupon the same was duly entered restraining the said defendant, the United

States Gramophone Company, from cancelling the contract of September 2nd, 1895, aforesaid, and also the contract of October 4th, 1895, aforesaid, and from assigning, transferring, or incumbrancing any of the patents of said United States Gramophone Company, save subject to the rights of your orator so as aforesaid the complainant in said suit, and likewise enjoining and restraining the said defendant, its officers and agents, from in anywise carrying out, or attempting carrying out, the agreement bearing date June 5th, 1900, referred to in said bill and in said exhibit circulars, or from effecting, or attempting to effect, any consolidation with the Consolidated Talking Machine Company of America, a corporation created under the laws of the State of New Jersey, a copy of such order of injunction being hereunto annexed, and marked "Exhibit I," and prayed to be taken and read as part hereof, a certified copy thereof being in the possession of complainant and ready to be produced to the court.

And your orator is informed and charges the fact to be:—

XXXII. That intending to injure and damage your orator, the said United States Gramophone Company and the said Berliner Gramophone Company have conspired and confederated together, and with sundry other persons, for the purpose of injuring and defrauding your orator, and of refusing and causing to be refused to him the delivery of such goods so as aforesaid required, and likewise of forfeiting the contract aforesaid between the Berliner Gramophone Company and your orator; and also and likewise for the purpose of forfeiting said contract so as aforesaid existing between the said companies, and that for such purpose, and in pursuance of such conspiracy, the Berliner Gramophone Company has, since the date of the bringing of said action, so as aforesaid heretofore begun, served or caused to be served notice of the cancellation of said contract upon your orator, which notice of cancellation however, is entirely insufficient, both in law and in equity, and is not in conformance to, or in compliance with, the terms of said contract. That also, and likewise, in pursuance of said conspiracy and agreement, the United States Gramophone Company has

served, or caused to be served, upon the Berliner Gramophone Company a notice of the cancellation of its said contract, which notice, however, is collusive and fraudulent, and intended to operate to the prejudice of your orator in his rights as aforesaid, and was not properly given, nor is the same justified by the terms of said contract.

And your orator in like manner alleges:—

XXXIII. That pursuant to said conspiracy the said United States Gramophone Company and the Berliner Gramophone Company herein have incorporated the Consolidated Talking Machine Company of America, for the purpose of consolidating the interests of said companies, and of defrauding your orator, and have assigned, or are about to assign and transfer to said company the patents, rights, and interests of the United States Gramophone Company and the Berliner Gramophone Company for the purpose of defrauding your orator through the placing of said patents, rights, and inventions in the hands of those who shall appear to be innocent third parties without notice who could owe no duty to your orator, and from whom your orator will be unable to secure any redress.

And likewise and in like manner your orator alleges, upon information and belief, and charges the fact to be:—

XXXIV. That the defendant herein, for the purpose of misleading the public and damaging your orator, advertised and caused to be advertised talking machines, sound records, and talking-machine accessories as gramophones and gramophone goods, and put out and placed, and caused to be placed, such advertisements in the name of the aforesaid corporation, the Consolidated Talking Machine Company of America, and also and likewise and in like manner adopted as his name and style of doing business for such purpose, and with like intent, the name and style of the Consolidated Talking Machine Company, and is now engaged in business under such name and style, and that in the proceeding so as aforesaid had by your orator to enlarge said injunction so as aforesaid granted in the State of Virginia said Johnson made and presented

an affidavit wherein he set forth that he was so doing business and carrying forward the same for the purpose of preventing any action being taken by said court against said corporation, the Consolidated Talking Machine Company of America, and that the defendant, conspiring with the officers, directors, and manufactures of all of said corporations aforesaid so as aforesaid in fraudulent and unlawful combinations among themselves upon the hearing and return of the aforesaid rule to show cause why said injunction should not be enlarged, proceeded to said State of Virginia, in company with such officers, directors, and managers, and made affidavit that he was so engaged in such manufacture and sale.

And your orator in like manner avers:—

XXXV. That the gramophones, gramophone goods and records so as herein set forth sold and about to be sold by the defendant, are the same goods in kind, quality, design, and workmanship which have been ordered from time to time by said Berliner Gramophone Company and made for it by said defendant, and are made under and pursuant to the processes, methods, and devices so as aforesaid paid for and developed by said Berliner Gramophone Company, and that large numbers of said records are of compositions and productions paid for by your orator, and the entire expense whereof has been charged to him so as aforesaid by said Berliner Gramophone Company under and pursuant to his said contract, and the property and right whereto are solely and exclusively in your orator.

And in like manner your orator avers:—

XXXVI. That notwithstanding the matters and things hereinbefore set forth, the defendant and his servants and agents, and others, are and have been engaged in buying, selling, trading in, advertising and disposing of, and threatening to dispose of, large quantities of gramophones, gramophone goods, records, and other property, to the sale and disposition whereof complainant is, as aforesaid, solely and exclusively entitled, and which were and are held by said Berliner Gramophone Company and the United States Gramo-

phone Company for the sole and exclusive advantage, use, and enjoyment of this complainant, as aforesaid.

And in like manner your orator alleges:—

XXXVII. That pursuant to such conspiracy said defendant caused to be discharged the employees of the Berliner Gramophone Company aforesaid, and proceeded to re-employ said persons on his own account for the purpose of so damaging the rights and property of your orator by and through the sale, disposition, and advertising of such gramophones, gramophone goods, and supplies, and the sale and disposition thereof, in all of which acts, matters, and things the defendant and his servants and agents, and others, claim that he is acting under, pursuant, and by virtue of the patents, rights, privileges, and franchises of the said The United States Gramophone Company and the Berliner Gramophone Company, and is using the testimonials, advertisements, cuts, pictures, styles of goods, and other property, appliances and rights of the said corporations all in hostility to, and controvention of, the contract, rights, and franchises of your orator.

XXXVIII. That the profits upon the said business to your orator are, and have been, very large, and that the damage to your orator and to the business which he has built up, as aforesaid, and the loss which has accrued and will accrue to him by reason of the premises is, and will be, wholly irreparable and incapable of ascertainment, computation, or determination vastly in excess of \$2000, to wit, being in excess of \$100,000, and that your orator cannot be compensated in damages for such loss, and that if the defendant shall continue such wrongful and illegal acts your orator will lose the whole value and benefit of its business, and will in no way be able to recompense himself for the loss of the same.

XXXIX. That your orator has no adequate remedy at law for the redress of such wrongs, and unless he receives the protection of this court he will be wholly without remedy and redress.

XL. That by reason of the matters and things hereinbefore set forth and by reason of such suits so as aforesaid pending by and between your orator and said Berliner Gramophone Company and United States Gramophone Company, and because and by reason of the conspiracy aforesaid and the fraudulent and illegal acts and designs of said corporations, their officers and agents, it is, and will be, useless that your orator apply to said corporations, or to either of them, or to the officers or directors thereof, to protect the rights of your orator under said contract or in any other matter, and that should your orator so apply, delay would occur in receiving response to his said request, and the matters and things so as aforesaid sought to be carried forward, in defiance of the rights of your orator, would be accomplished. And your orator further shows that should any suit be brought by either of said corporations, the same, pursuant to said conspiracy entered into as aforesaid, would be allowed to slumber, and would not be diligently or faithfully prosecuted or carried forward, and that, therefore, your orator is obliged in his own name to bring this his bill and pray for the relief of this court.

XLI. And your orator is informed and charges the fact to be that a large and controlling interest in the stock of the Berliner Gramophone Company and of the United States Gramophone Company has, pursuant to said contract of June 5th, 1900, been deposited in trust for and has become the stock and property of the Consolidated Talking Machine Company of America, and that the stockholders of said corporations for said stock have received stock of the said company and the rights to such stock, and have become and are the stockholders of the said corporation and the persons entitled to its assets and property and to manage its affairs, and are the real parties in interest and the persons controlling the rights, properties, and affairs of said corporation, and that the said stockholders of the said corporations and the officers, managers, directors, and agents of the same are the same persons controlling, conducting, and directing the affairs, business, and matters of the said

Consolidated Talking Machine Company of America aforesaid.

XLII. And your orator in like manner alleges that the aforesaid Emil Berliner, the patentee hereinbefore referred to, is, and ever since its organization has been, president of the United States Gramophone Company; that a copy of the injunction order so as aforesaid granted against said United States Gramophone Company by the United States Circuit Court for the District of West Virginia was served upon said Berliner in the city of Washington, District of Columbia.

And your orator in like manner alleges:—

XLIII. That heretofore, and in or about the month of July, 1900, the said Berliner registered or caused to be registered in his name in the Patent Office of the United States a certain trade mark, consisting of a picture with the words, "His master's voice," exhibited herewith, and marked "Exhibit A A," and that said trade mark has been used both by the said Berliner Gramophone Company and by the defendant herein in and in connection with the sale of gramophones and gramophone goods and the advertisements thereof, and that such use is pursuant to and in continuance and consummation of said conspiracy so as aforesaid set forth.

That your orator is informed and charges the fact to be:—

XLIV. That on the tenth day of October, 1900, at Abington, in the State of Virginia, before the Hon. John Paul, the aforesaid rules and motions so as aforesaid made were argued, counsel appeared for the parties respectively, and the defendant herein attended in person upon such argument, and that thereupon all of said matters were by said judge taken under advisement and consideration, and that no decision has as yet been rendered thereupon, save as aforesaid, but the defendant, returning from said hearing and going forward to carry out said illegal design and circumvent the order of said court so as aforesaid made, has

continued to put out and publish his catalogues, circulars, and advertisements, and has sold and threatened to sell such machines and goods, and is now about shipping or has shipped large quantities thereof, to wit, five hundred machines and a very large number of records, to the city of Chicago for sale there by dealers in such merchandise, and that unless said defendant be immediately enjoined and restrained from such sale and disposition your orator will be irreparably damaged and his remedy rendered unavailing.

Wherefore your orator stands in need of equitable relief, having no relief save in this Honorable Court, and prays:—

First.—That your Honors grant to your orator your writ of injunction, special until the hearing and perpetual thereafter, enjoining and restraining the said Eldridge R. Johnson, the defendant, and all persons claiming to act under his authority, from selling, delivering, or parting with any of the gramophones, records, matrices, or goods made by him under said patents or upon or pursuant to said designs or processes.

Second.—That your Honors grant unto your orator your writ of injunction restraining the said defendant, and all persons claiming to act under his authority, from manufacturing, buying, selling, or dealing in gramophones or gramophone records or goods or machinery, or appliances for the production thereof, manufactured by or for or the property of said Berliner Gramophone Company, or any person, for the use or benefit of them, or any of them, or upon patterns, designs, models, forms, or with machinery paid for in whole or in part paid for by them, or either of them, under said agreements aforesaid, or the property of them, or either of them, to the exclusive right to the sale whereof your orator is entitled under the contracts aforesaid or to the exclusive right to make, vend, and use which the said Berliner Gramophone Company and said United States Gramophone Company, or either of them, is entitled under and pursuant to the patents aforesaid, or any of the same.

Third.—That the defendant be enjoined and restrained from advertising to sell or give away any gramophones, gramophone records or goods, the sale or disposition whereof is sought to be enjoined as aforesaid, and be likewise enjoined and restrained from causing or allowing so to be advertised or offered any of said goods.

Fourth.—That the defendant, his agents and servants, or any of them, be enjoined and restrained from selling or offering for sale such or any goods under the name, style, or designation of gramophones or gramophone goods, and be enjoined and restrained from the use or employment of said name in any manner whatsoever.

Fifth.—That your Honors grant unto your orator your writ of injunction restraining the said defendant from using or employing in his business or by or in connection therewith, or in his advertisements, circulars, or printed matter, the name of the Consolidated Talking Machine Company of America, or the name the Consolidated Talking Machine Company, or any other name, term, or other designation so nearly resembling the same as to mislead and deceive the public and injure your orator.

Sixth.—That your orator have such other and further relief in the premises as the nature of the circumstances of the case may require, and which to your Honorable Court may seem equitable.

May it please your Honors, the premises considered, to grant unto your orator not only a writ of injunction issuing out of and under the seal of this Honorable Court enjoining the said defendant, as heretofore prayed, but also a writ of subpoena to be directed to the said Eldridge R. Johnson, the defendant, therein and thereby commanding him at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there full, true, direct, and perfect answer make, but not upon oath or affirmation, the benefit of which is ex-

pressly waived by your orator, to all and singular the premises, and further to stand to, perform, and abide by such other order, direction, and decree therein as to this Honorable Court shall seem meet, and which may be made against him in the premises, and as shall be agreeable to equity and good conscience.

And your orator will ever pray.

(Signed) FRANK SEAMAN.

(Signed) WALDO G. MORSE,
Solicitor for Plaintiff.

RUSSELL DUANE,
Of Counsel.

UNITED STATES OF AMERICA, }
SOUTHERN DISTRICT OF NEW YORK, } ss.
COUNTY OF WESTCHESTER,

On this twentieth day of October, 1900, before me personally appeared Frank Seaman, to me known and known to me to be the above plaintiff, who made solemn oath that he has read the foregoing bill of complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) FRANK SEAMAN.

Sworn to and subscribed before me, this twentieth day of October, 1900.

[SEAL] (Signed) E. ALEX. HOUSTON,
Notary Public, Westchester Co.

EXHIBIT A.

RECEIVED, Philadelphia, Pennsylvania, 8 October, 1896
From Frank Seaman, of New York, Two Thousand and
Four Dollars for six hundred and sixty-eight (668) 7-inch
hand Gramophones in the same complete condition as he has
been receiving machines of that style. The machines are
to be delivered to him as he may direct and are a part of
the whole lot of machines and records purchased at \$3.00
for each machine and \$1.50 for each dozen of records, which
lot is sold to him in connection with the National Contract
about to be executed by the Berliner Gramophone Company
with him in the form this day handed to Mr. Owen. But
IT IS A CONDITION of the sale of the said lot of Gramophones
that, on or before the 13th inst., the said Frank Seaman shall
execute, acknowledge, and deliver the said contract and com-
ply with the terms stated in a letter from Frederick M.
Leonard to Thomas S. Parvin, President of the Berliner
Gramophone Company, dated this day, a copy of which is
hereto attached; or, in default of such execution, etc., and
compliance, the sale of the whole lot, except such of the said
668 machines as have been then delivered f. o. b. cars in
Philadelphia, shall be canceled, and he shall pay for such
of the said 668 machines as have been delivered at the prices
and on the terms stated in the contract between the Berliner
Gramophone Company and him for the states of New York
and New Jersey and at present in force.

BERLINER GRAMOPHONE COMPANY

By THOMAS S. PARVIN,
President.

\$2,004.

8 OCTOBER 1896.

L-49-0.

EXECUTION OF NATIONAL CONTRACT BETWEEN BERLINER
GRAMOPHONE COMPANY AND FRANK SEAMAN.

*Thomas S. Parvin, Esq., President, Berliner Gramophone
Company, Bullitt Building, Philadelphia Pa.,*

DEAR SIR:—A draft of the contract as finally authorized by your Board and agreed upon with Mr. Seaman has to-day been handed to Mr. Owen. I call your attention to the terms upon which, under the resolutions of your Board and your arrangement with Mr. Seaman, the contract is to be executed viz.:—

First.—It will be necessary to comply strictly with the terms of the following resolution of your Board, namely;

"Resolved, that before the contract is executed arrangements must be made providing for the manner in which this company is to pay back Frank Seaman, either in goods now ready or in goods to be furnished the \$3,600 (or thereabouts) advanced on Western Contract; also for the payment to the company in cash of any balance due to this company on New York and New Jersey Contract up to the time of executing National Contract; and for the advance of \$6,000. cash in payment or part payment of goods now in factory at values to be appraised."

Mr. Seaman has agreed to allow the company to pay back to him in goods now at the factory or shipped out of the factory since the above resolution has passed, the sum of \$3,600. (or thereabouts) mentioned in the above resolution.

And Mr. Seaman is to pay to you to-day, on account of goods now in factory, or shipped out of the factory since the above resolution was passed the sum of Two Thousand and Four Dollars, being part of the \$6,000. cash mentioned in the above resolution.

At or before the execution of the contract, Mr. Seaman is to pay to you in cash the balance of the said \$6,000 viz.: \$3,996.

Values have been fixed by appraisement for the goods mentioned in the above resolution as being in the factory as follows: viz. \$3. for each hand Gramophone in the same complete condition as Mr. Seaman has been receiving machines of that style; \$1.50 per dozen for records with the privilege of having any of them restamped without the payment of additional royalty, provided they are restamped before Mr. Seaman sells them and within a reasonable time. And the Berliner Gramophone Company has agreed to sell, and Mr. Seaman has agreed to purchase, all the goods at the appraisement.

It has been agreed between you and Mr. Seaman that, when the total amount of the purchase price of the goods has been ascertained, the difference between that price and the total of the credit and cash payments hereinbefore mentioned, viz., \$3.600 (or thereabouts), \$2.004 and \$3.996, shall be adjusted between you. If the difference is a balance in your favor, Mr. Seaman is to pay the balance with cash or his notes at his option, at not longer than ninety days. If the difference is a balance in the favor of Mr. Seaman, the Berliner Gramophone Company is to allow that amount as a credit on account of his first future purchase under the National Contract.

Any balance in cash that may be due the Berliner Gramophone Company by Mr. Seaman on his New York and New Jersey contract is to be paid in cash by him to the Berliner Gramophone Company, when the amount is ascertained, notwithstanding the termination of the New York and New Jersey contract by the execution of the National Contract.

Second.—It will also be necessary to comply strictly with the terms of the following resolution adopted by your Board, namely:

"Resolved, that the contract this day authorized shall not be executed until Mr. Seaman has approved some samples of goods under section 2 of the contract."

It is understood that Mr. Seaman has approved samples of spring motor machines as per shipments made to him during September.

Third.—Before executing the proposed contract, Mr. Seaman should in writing approve the terms set forth in the above letter, and confirm his promise to perform the obligations thereby imposed upon him.

Very truly yours,

FREDERICK M. LEONARD,

NEW YORK

1896.

I have read the above letter and approve the terms therein stated and promise to perform the obligation thereto imposed upon me.

RECEIVED, New York, October 12th, 1896, from Frank Seaman of New York, three thousand nine hundred ninety-six dollars (\$3,996) being the balance of six thousand dollars (\$6,000) to be paid on the execution of a contract between Mr. Frank Seaman and the Berliner Gramophone Company, dated October 10th, 1896. This sum of six thousand dollars (\$6,000.00) of which this payment of three thousand nine hundred and ninety-six dollars (\$3,996) is a part, is received on account of goods to be delivered to the said Frank Seaman according to the letter of Frederick M. Leonard dated Oct. 8th 1896, to Thomas S. Parvin, President of the Berliner Gramophone Company; the provision of which letter have been accepted and approved by him this day.

BERLINER GRAMOPHONE COMPANY,

By THOMAS S. PARVIN,

President.

\$3,996.00.

THIS AGREEMENT, made the tenth day of October, A. D. one thousand eight hundred ninety-six (1896), between the *Berliner Gramophone Company*, a corporation of the State of Virginia (hereinafter called "Licensor"), party of the first part, and *Frank Seaman*, of New York City (hereinafter called the "Licensee"), party of the second part. *Witnesseth that:*

Whereas, the licensor exclusively controls in the United States of America, the inventions of Emil Berliner, Esq., made and to be made, relating to the gramophone and the letters patent of the United States issued and to be issued therefor (including the following patents, viz.: No. 372,786, dated 8 November, 1887, for a Gramophone; No. 382,790, dated 15 May, 1888, for a process of Producing Records of Sound; No. 534,543 dated 19 February, 1895, for a Gramophone; and No. 548,623, dated 29 October, 1895, for an improvement in Sound Records and methods of Making Same); and the Licensee desires to buy, sell and deal in Gramophones and gramophone goods (except recording apparatus) as hereinafter set forth;

Now, therefore, in consideration as well of the sum of one dollar paid by the licensee to the licensor, the receipt of which is hereby acknowledged, as of the sums of money hereafter to be paid as hereinafter described, and of the covenants on the part of the Licensee hereinafter contained, and subject to the terms of all the covenants hereinafter contained, the Licensor hereby grants to the Licensee the exclusive license to buy, sell and deal in, throughout the United States of America (except in the District of Columbia), gramophones and gramophone goods embodying the said invention and all improvements therein that may come into the Licensor's control (excepting recording apparatus), for a period of fifteen years from the date of this agreement;

And, for the consideration aforesaid, the Licensor covenants to and with the Licensee that:

1. As long as, during the period aforesaid, the licensee punctually performs his covenants herinafter contained the Licensor shall sell exclusively to the Licensee the gramophones and gramophone goods aforesaid, in the territory hereinbefore allotted to the Licensee, at the prices and on the terms hereinafter stated; and shall not sell or deliver any of the gramophones and gramophone goods aforesaid in the territory aforesaid to any other person or corporation, except to officers, directors and stockholders of the Licensor—and in that case only in reasonable quantities, for their own use and to be given away by them, but not to be sold for profit.

2. The gramophones and gramophone goods so to be sold by the Licensor to the Licensee shall conform to samples heretofore submitted by the Licensor and approved by the Licensee and such other samples as the Licensee may hereafter approve or may himself make and give to the Licensor with working drawings, patterns, cost-sheets and all other information necessary for the manufacture of gramophones and gramophone goods, according to the said samples—*Provided* That the Licensee shall make no sample disks or records;

3. As long as, during the period aforesaid, the Licensee punctually performs his covenants hereinafter contained, the Licensor shall fill, with reasonable promptness and despatch, all orders of the Licensee for gramophones and gramophone goods by delivering, f. o. b. cars or other means of transportation designated by the Licensee at the place of manufacture, gramophones and gramophone goods as ordered, in good working and marketable condition according to samples—*Provided* That the Licensor shall be allowed sufficient time to manufacture the said gramophones and gramophone goods after the receipt of orders, and that, if, for any unavoidable cause, such as fire, flood, strikes of workmen, litigation or failure of facilities for transportation, delay occurs in filling the said orders, the delay shall not be deemed a breach of covenant, but the Licensee shall receive on the time limits of his minimum guaranty of purchase, as hereinafter set forth, an extension for a period equal to the period of the said delay—*And provided further*, That as long as, by reason of any litigation growing out of a contract heretofore made between the said Berliner Gramophone Company and Messrs. Tate and Jones, the Licensor is actually prevented from selling to the Licensee, and the Licensee is actually prevented from dealing in, gramophones and gramophone goods, within the New England States, there shall be a reduction of 12 per cent. in the Licensee's minimum guaranty of advertising and in the Licensee's minimum guaranty of purchase, as hereinafter set forth; and the Licensor shall be permitted to sell under the contract with Tate and Jones—*And provided further* That the Licensor shall be permitted to sell gramophones and gramophone goods under a

contract heretofore made between the said Berliner Gramophone Company and Edward J. Nellis as long as the said contract shall be in force, but the said licensee shall cause the said contract to be cancelled without unnecessary delay.

4. If the Licensor makes default and fails to fill, with reasonable promptness and despatch as hereinbefore covenanted, any of the orders of the Licensee, the Licensee may, after notification in writing of his intention to the licensor, supply, in the manner and on the terms hereinafter stated in Section 8 of this agreement, the gramophones, gramophone goods and parts for the repair thereof necessary to fill the orders so defaulted by the Licensor.

5. The Licensor shall, for the prices and on the terms hereinafter stated, furnish to the Licensee parts for the repair of gramophones and gramophone goods, in so far as the Licensor can furnish the said parts without interfering with its filling the regular orders of the Licensee for gramophones and gramophone goods—*Provided That*, of required by the Licensor, the parts to be replaced by the parts thus furnished shall be surrendered to the Licensor or their loss shall be satisfactorily accounted for;

6. The Licensor shall defend at its own cost and expense whenever requested by the Licensee, all actions and suits involving the validity of any other patents which may be issued for improvements in the said inventions and may become subject to this agreement;

7. The Licensor shall forward immediately to the Licensee all mail of whatever kind or nature which has to do with the selling of goods within the territory aforesaid during the life of this agreement—Except in so far as the said mail should, under contracts with the United States Gramophone Company, be forwarded to that Company;

8. The Licensee shall have the privilege of supplying by contract to the Licensor gramophones and gramophone goods and parts for the repair thereof to fill the order of the Licensee—*Provided that* the said gramophone, gramophone goods and parts for the repair thereof shall be equal in quality to those supplied by the Licensor—*And provided also that* the Licensee shall furnish the said gramophone, gramophone

goods and parts for the repair thereof at at least 5 per cent. less than the cost at which the Licensor can manufacture them or procure them elsewhere, and that any loss or delay resulting from their not proving satisfactory or not being delivered on time shall be deemed to be the fault of the Licensee. But the manufacture of gramophones, gramophone goods and parts for the repair thereof, if undertaken by the Licensee, shall be subject to the restrictions of all contracts with the United States Gramophone Company and Emil Berliner, and under no circumstances shall the Licensee manufacture disks or records.

9. The Licensee may cause to be incorporated and organized, under the laws of the State of New York, or of any other state, a corporation or corporations with such powers and capital as the Licensor may in writing approve, and after such approval the Licensee may assign to the said corporation or corporations all the rights hereby granted by the Licensor, *Provided*, that the said corporation or corporations shall assume and undertake the performance of the covenants to be performed by the Licensee hereunder—whereupon all liabilities on the part of the Licensee for the future performance of the said covenants shall cease, but the Licensee shall not be relieved from his liability for previous breaches of the said covenants;

And, in consideration of the license and covenants by the Licensor hereinbefore contained, the Licensee does hereby covenant to and with the Licensor as follows, viz.:

10. For all Gramophones, gramophone goods and parts for the repair thereof ordered by the Licensee, the Licensee shall within ten days after their delivery, f. o. b. cars or other means of transportation designated by the Licensee at the place of their manufacture, pay in full without discount, and shall and in the event take and pay for all goods ordered; and if at any time or from time to time the Licensor shall in writing request payments on delivery, the Licensee shall pay the Licensor according to the Licensor's request;

11. As a minimum guaranty of purchases, the Licensee shall order and purchase from the Licensor, according to samples already approved by the Licensee and such as may

hereafter be established as hereinbefore covenanted, and at prices to be fixed as hereinafter mutually covenanted, gramophones and gramophone goods amounting at manufacturing cost to the aggregate amounts following (which amounts in every instance are understood to mean not the prices but merely the manufacturing cost of the said gramophones and gramophone goods, exclusively of the 40 per cent. margin hereinafter mentioned and all royalty), viz.: during the month of September, 1896, \$1,333.34; during the month of October 1896, \$2,666.67; during the month of November 1896, \$5,333.34; during the month of December 1896, \$8,000.00; during the month of January 1897, \$2,766.67; during each and every calendar month in the year 1897 after the month of January, \$6,666.67; during the month of January 1898, \$6,666.67, and thereafter, until the expiration of the period of fifteen years first hereinbefore mentioned during each and every calendar month \$10,000.00—*Provided* that any excess of purchases in any one month over and above the minimum guaranty fixed in this section for that month shall be applied thereafter at the option of the licensee, toward the fulfillment of the minimum guaranty for any subsequent month during the year then current, dating the year from the first day of February last precedent—*And provided further*, that parts ordered by the licensee for the repair of gramophones and gramophone goods and on which the Licensor is not required to pay royalty shall not be counted toward the fulfillment of the Licensee's minimum of guaranty;

12. The Licensee shall use his best efforts to promote the gramophone business in the United States, and shall advertise gramophones and gramophone goods prominently and freely, as "Berliner" gramophones and "Berliner" gramophone goods; and shall expend immediately and, in any event, not later than 15 March, 1897, for that purpose the sum of at least \$10,000.00 at lowest current publishers prices to advertisers.

13. The Licensee shall not manufacture, buy, sell or use gramophones or gramophone goods, or any parts thereof, or other talking machine or parts thereof, except such as he buys from the Licensor;

14. The Licensee shall see that all gramophones and gramophone goods sold by him bear serial numbers, when the Licensor affixes serial numbers; and shall keep a record of all gramophones and gramophone goods sold by him, showing distinctly such serial number and the purchaser of every article sold; and shall at all times exhibit the said record to the Licensor when requested;

15. The Licensee, hereby admitting, and conceding the validity of the Letters Patent hereinbefore mentioned shall not dispute or contest them, and shall not make use of any other name than that of Emil Berliner in connection with gramophones and gramophone goods; and shall not detach or deface any patent marks or other marks or labels placed by the Licensor upon its gramophones, gramophone goods and publications, and shall not add to them other marks or labels without the consent in writing of the Licensor;

16. For the Breach of any covenant herein contained on the part of the Licensor, the Licensor may, at its option, give notice in writing to the Licensee, pointing out the cause of complaint; and, if, within 30 days after delivery of the said notice to the Licensee, the Licensee shall not remove the cause of complaint and fully perform the covenant so broken, then the Licensor may, by second notice in writing, to the Licensee, revoke the license hereby given, withdraw from all its covenants and annul all the Licensee's rights hereunder and in that case all liability of the Licensee on his covenants in this agreement shall cease, except that he shall remain bound to take and pay for, in accordance with the terms hereof, all gramophones, gramophone goods and parts for the repair of gramophones for which he has at the time actually given orders. If the breach of covenant consists of the failure to pay money, the first notice may after ten days have expired at the option of the Licensor, work the revocation, withdrawal and annulments hereinbefore described, without any further days of grace or second notice. The remedy given in this section is exclusive so far as the obligation of the Licensee to purchase goods to any particular amount is concerned; and the agreement to make such purchases shall be enforced only in accordance there-

with and not by any other remedy, legal or equitable; as to all other obligations of the Licensee, the remedy given in this section is merely cumulative and shall not deprive the Licensor of any of its other legal or equitable remedies;

And it is hereby mutually covenanted and agreed by and between the parties hereto that:

17. The price which the Licensor shall receive from the Licensee for gramophones and gramophone goods shall be the sum of the following three items, viz.: first, the actual manufacturing cost; second, a making of 40 per cent. of the said manufacturing cost; and third, the royalty which the Licensor is required to pay to the United States Gramophone Company to the amount of ten per cent. of the retail price of the said gramophone and gramophone goods;

18. The term "manufacturing cost" as used in this agreement shall be held to include the cost of labor, materials and supplies consumed in making the said gramophones and gramophone goods and parts for the repair thereof, and in their packing ready for shipment, and in their delivery f. o. b. cars or other means of transportation designated by the Licensee at the place of their manufacture, the rents of manufacturing plants, leased, and six per cent. interest on the cost of manufacturing plants owned (provided such plants leased and owned shall not exceed the reasonable facilities for filling the licensee's orders), insurance and taxes on such plants and on materials and supplies used in connection therewith and on goods in course of manufacture or completed, and all other items which relate exclusively to the process of manufacturing or are usually or properly charged to manufacturing account; but shall not include the salaries of officers nor the expenses of maintaining the organization of the Licensor, or its office, or its correspondence, or of keeping its account, or of conducting its litigation, nor any damages for personal injuries to employees, nor any charges which are usually or properly classified in office account or selling account—*Provided* That the Laboratory expenses shall not be charged in the manufacturing cost of records, although the cost of the matrix and the cost of talent shall be included in the manufacturing cost of records whether the records prove satisfactory to the Licensee or not;

19. If any arrangements are made between the United States Gramophone Company and the Licensor whereby the ten per cent. royalty hereinbefore mentioned is in any way decreased, the Licensor shall give the full benefit of this decrease in royalty to the Licensee.

20. Quarterly (on or about 1 January, 1 April, 1 July and 1 October in each year), the Licensor and the Licensee shall meet to estimate as nearly as possible the manufacturing cost of all styles of gramophones and gramophone goods which the Licensor may be supplying to the Licensee at that time, or the Licensor or the Licensee may desire to place upon the market. The cost so estimated shall be the basis for billing goods during the ensuing quarter, and at the end of the quarter the Licensor shall correct the estimate according to actual experience, and any difference between the estimated cost shall be adjusted between the licensor and the Licensee by the payment of the difference in cash;

21. At these quarterly meetings, the retail prices for the ensuing quarter shall be fixed and remain fixed until changed at a subsequently quarterly meeting, and shall form the basis for estimating the royalty hereinbefore mentioned. At these quarterly meetings the licensee shall propose the retail prices to be fixed by the meetings, and the prices proposed by them shall be adopted and fixed—*Provided* That they shall not be less than the prices which the Licensee pays the Licensor, not less than the whole sale or jobbers prices which the Licensee receives—*And provided further* that in no event shall the royalty hereinbefore mentioned be less than fifty cents on any one gramophone—*And provided finally*, that the retail prices so to be fixed shall be the prices at which the Licensee shall in good faith and at all times while the said retail prices are in force sell gramophones and gramophone goods to purchasers at retail; and if the Licensee shall refuse to fix a retail price at the time of his order then the retail price on the basis of which royalty is to be computed as hereinbefore covenanted shall be two and one half times the price which the Licensor receives from the Licensee for the said gramophones and gramophone goods—this royalty shall be subject to correction should the

Licensee at any time fix a higher price for the said gramophones and gramophone goods. Should the Licensee decide at any time to merely rent or lease any of the gramophones and gramophone goods, a special arrangement as to royalty shall be made with the Licensor.

22. The Licensor and the Licensee shall at all times exhibit their books of account to each other, when requested in order to determine any questions in dispute under this agreement:

23. This agreement shall remain in full force and effect for a period of fifteen years from its date; and if at the expiration of that period, the Licensee desires a renewal hereof under any patents then existing and subject thereof, the Licensor shall grant such renewal to the Licensee upon as favorable terms as it shall be willing to accord to any other individual or corporation.

24. All the agreements now existing between the Licensor and the Licensee are, by the execution of this agreement, made null and void, and all liability thereunder is hereby waived, except that any credit for money paid which is now standing as due to the licensee may be hereafter applied in payment for gramophones and gramophone goods under this contract:

25. No alteration in or waiver of the terms of this agreement shall be valid unless reduced to writing and signed and sealed by the Licensor and the Licensee:

26. This agreement shall be so construed as not to require the Licensor or the Licensee to violate any contracts with the United States Gramophone Company of Emil Berliner to which the patents hereinbefore mentioned or the Licensor may be subject—especially the agreements between the United States Gramophone Company, and W. C. Jones, dated 2 September 1895, and 4 October 1895, and the agreement between Emil Berliner and W. C. Jones dated 2 September 1895, copies of which are hereto attached:

27. If any dispute shall arise between the Licensor and the Licensee regarding the interpretation of this agreement, each party shall appoint a disinterested arbitrator and in writing notify the other of the appointment, and the two

arbitrators thus appointed shall choose a third, and the three so appointed and chosen shall decide the dispute; and an award signed by any two of the said three arbitrators shall be final, conclusive and binding upon both parties. And if either party, upon receiving from the other written notice to appoint an arbitrator as heretofore said, shall neglect for a period of sixty days to make such an appointment and to notify the other party as aforesaid, the other party, after appointing his own arbitrator may appoint another disinterested person as arbitrator for the parties so neglecting to make an appointment, and thereafter the arbitration shall proceed in the same manner and with the same effect as if each party had appointed his own arbitrator. And if two arbitrators when appointed cannot agree upon a third, or, if, after three arbitrators have been appointed and chosen, at least two of them have not agreed upon a decision and signed an award within thirty days after notice in writing by either party to make an award, then the party giving such notice may determine the arbitration; and resort may be had to legal proceedings;

28. The term "Licensor" as used in this agreement shall be held to mean the said "Licensor," its successors and assigns; and the term "Licensee," as used in this agreement, shall be held to mean the said "Licensee," his executors and administrators and the corporation to which, with the approval of the Licensor, as hereinbefore covenanted, the said Frank Seaman may assign the rights hereby granted to the Licensee.

29. The phrase "gramophones and gramophone goods" as used in this agreement shall be held to include not only the machines and mechanical devices constituting the inventions hereinbefore mentioned and all the improvements in the said inventions that may come into the Licensor's control (except recording apparatus), but also all motors (except electric batteries) that may be adopted for driving the said machines and mechanical devices, as well as all other mechanism, appliances and accessories that may be adopted as necessary or useful in handling, operating or using the machines or mechanical devices which constitute the said in-

ventions or improvements—for it is the intention hereof to refer by the phrase aforesaid to the complete sound-reproducing machine which may embody the said inventions and improvements and all parts of the said machine notwithstanding the fact that other inventions may also be embodied therewith in the said machine.

In Witness Whereof, the Licensor has caused this agreement to be signed in its name by the President and sealed with its corporate seal attested by its Secretary, and the Licensee has hereunto set his hand and seal this the day and year first above written.

BERLINER GRAMOPHONE COMPANY,

By THOS. S. PARVIN,
President.

[SEAL]

FRANK SEAMAN. [SEAL]

Attest:

MAX H. BIERNBAUM
Secretary.

COMMONWEALTH OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA, } ss.

BE IT REMEMBERED, That on this 10th day of October A. D. 1896, personally came before me the undersigned, Notary Public within and for the city and county aforesaid, Thomas S. Parvin, who, being duly sworn, did depose and say that he is the President of the Berliner Gramophone Company, the Licensor in the foregoing instrument; that the name of said Company is signed to said instrument by him as President of said Company by virtue of the order of the Board of Directors; that seal of the Company attached thereto is the proper and genuine seal of said company attached thereto by order of said Board of Directors; and the said Thomas S. Parvin, as President, acknowledged the

foregoing instrument to be the act and deed of the Berliner Gramophone Company for the uses and purpose therein expressed.

THOMAS S. PARVIN.

In Witness Whereof, I have hereunto set my hand and affixed my notarial seal of office, this tenth day of October, A. D. 1896.

CHARLES H. BANNAIRD,
Notary Public.

[SEAL]

COMMONWEALTH OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA, } ss.

BE IT REMEMBERED, That on this tenth day of October A. D., 1896, personally came before me the undersigned a Notary Public in and for the City and County aforesaid, M. H. Biernbaum, who, being by me duly sworn did depose and say, that he is the Secretary of the Berliner Gramophone Company, Licensor in the foregoing instrument, that he affixed the seal of the said Company thereto and duly attested the same, by order of the Board of the Directors thereof.

MAX H. BIERNBAUM.

In Witness Whereof, I have set my hand and affixed my notarial seal this 10th day of October, 1896.

CHARLES H. BANNAIRD,
Notary Public.

[SEAL]

CITY AND COUNTY OF NEW YORK, }
STATE OF NEW YORK, } ss

Before me; the undersigned, a Notary Public in and for the City and County aforesaid, personally came the above-named Frank Seaman, who in due form of law acknowledged

the foregoing instrument to be his act and deed for the purposes therein specified.

Witness my hand and notarial seal, this 12th day of October, A. D. 1896.

[SEAL]^e

W. M. ANDRUS,
Notary Public, N. Y. Co. 24.

THIS AGREEMENT, made this 2nd day of September, 1895, by and between the *United States Gramophone Company*, a corporation organized under the laws of West Virginia, with its principal office in Washington, D. C., and hereinafter referred to as the party of the first part, and *W. C. Jones*, of New York City, N. Y., and hereinafter referred to as the party of the second part, *Witnesseth, that*

WHEREAS, the said party of the first part is the sole and lawful owner of all rights accrued under the Letters Patent issued to Emil Berliner for his invention known as the Gramophone, and has acquired sole right to control, convey and dispose of all rights to all inventions of the said Emil Berliner which have been or which shall have been or which shall hereafter be made, having relation to the recording and reproduction of sound, it is agreed as follows:

First.—That in consideration of one dollar in hand paid by the party of the second part to the party of the first part, the receipt of which is hereby acknowledged by the party of the first part and in further consideration of the obligations herein entered into, the said party of the first part does assign, transfer and set over to the party of the second part, the sole and exclusive right to manufacture, sell, lease and deal in said inventions, made or to be made by said Berliner, in the United States.

Second.—The party of the second part agrees to pay to the party of the first part, on all gramophones, sound records, and other accessories of the gramophone sold under the rights conveyed by this contract, a royalty of 10% of the retail price to be fixed by said second party, provided that

the royalty on completed gramophones shall not be less than fifty cents a piece should said second party decide at any time to rent or lease any of its gramophones a special agreement for royalties shall be mutually agreed upon by the two parties.

Third.—Second party agrees to pay to party of the first part, upon the signing of this contract, the sum of fifteen hundred dollars, and within sixty days from the date of this contract, the further sum of thirteen thousand, five hundred dollars, (failing in which, this contract shall be null and void and no damages shall be recoverable by or from either party), which sum shall be an advance payment upon the royalty payable during the first year of the continuance of this contract. Said second party further agrees that the royalties to be paid said first party during the second year shall not be less than thirty five thousand dollars, and that the aggregate of the royalties to be paid said first party during the first three years of this agreement shall amount at least seventy five thousand dollars, which amount may be made up by said second party within said three years. After said three years, it is agreed by said second party that it will diligently and in a business-like manner prosecute the gramophone business in the interest of the gramophone invention, and in doing so, it shall be absolved from any fixed minimum amount of royalty to be paid annually.

Fourth.—Said second party may form a company within ninety days from the date of this contract, said Company to take the place of said second party, and to assume, carry out and be responsible for all obligations herein entered into by said party of the second part.

Fifth.—It is mutually agreed by parties of the first and second parts that all rights and franchises conveyed and intended to be conveyed from party of the first part to party of the second part, shall by assignment of party of the second part, accrue to the said Company to be formed as hereinbefore provided, and that obligations of the said W. C. Jones, shall then cease.

Sixth.—Party of the first part agrees that at the time of the transfer of rights and franchises by the said second

party to their successors or assigns, said party of the first will enter into any further writing which may be necessary to perfect said transfer.

Seventh.—Party of the first part agrees to defend said second party in the enjoinder of all rights of franchises conveyed and intended to be conveyed by this contract, and to prosecute any infringement of said rights; provided that said second party shall bear one half the cost of any litigation to which it may be a party after three years from the date of this contract. Said first party further agrees to deposit within ninety days from the date of this contract with a Trust Company, in this City of New York, or Philadelphia, ten thousand shares of its own, the United States Gramophone Company, common stock, to be made out in the name of said Trust Company, which stock, or any part thereof, may be sold at any time for five dollars a share or more, at the request of either of these two parties to this contract, the proceeds to be a guaranty fund in the hands of the said Trust Company, for the benefit of said second party against pecuniary loss entailed by any injunction or decree for infringement involving the patents under this agreement, at any time after such an injunction or decree said stock, if still held in trust, may be sold at any price obtainable, provided both parties shall have been notified ten days before the date of sale, and the proceeds shall go towards covering such loss of said second parties. This stock held in trust shall not be entitled to any dividends until sold by said Trust Company, and at the end of ten years from the date of this agreement, any of the said stock still in the hands of said Trust Company, or any cash from the proceeds of said stock, and not required to satisfy the claim of the second party, shall be re-transferred, and returned to said party of the first part by said Trust Company.

Eighth.—Party of the second part agrees to make a true and accurate return of its sales or leases of gramophone and gramophone goods monthly, and that its books and those of its successors and assigns shall at all times be open for inspection by the party of the first part, so far as may be

necessary, to determine the amount of royalties due. It is further agreed by said second party that they will settle their accounts with said first party paying the royalties due on all goods sold during any month on or before the end of the following month.

Ninth.—It is agreed that the manufacture of disks and records shall be retained under the control of party of the second part, their successors or assigns; and no rights or franchises covering this branch of the work shall be granted to any third party, nor shall any gramophone recorder be sold within three years from the date of this contract, without the assent of both parties to this contract.

Tenth.—The second party, its successors or assigns, shall provide all apparatus sold under said patents with the usual patent stamp and shall number the machines at the factory in running series, to facilitate the discovery of infringers by entering these numbers, and to whom sold, on their books.

Eleventh.—It is hereby mutually agreed by and between first and second parties that in case of the non-fulfillment of the obligations specified in paragraphs second and third of this contract and assumed by party of the second part, party of the first part may give notice in writing of such non-fulfillment, and upon the further failure of the said party of the second part for a period of sixty days from the receipt of such notice, party of the first part may declare this agreement null and void, whereupon all rights given by said first party to said second party shall be considered as revoked. And in case of failure by party of the first party to comply with any of the terms of this contract, the party of the second part may give notice in writing of such failure, and in case of the further failure to comply with the terms of this contract by party of the first part for a period of sixty days from the receipt of such notice, second party shall be absolved from all obligations assumed under this contract, royalties due on goods, sold excepted.

Twelfth.—Parties of the second part, or their successors or assigns, shall purchase for cash within three months from the date of this agreement from the United States Gramophone Company, all gramophones and gramophone goods

now in stock, which are in good and saleable condition, paying therefor manufacturer's prices, and also at reasonable prices, all manufacturing machines owned by said United States Gramophone Company, which may be available for use in their work, otherwise said first party may sell said gramophone goods to others.

Thirteenth.—In case the termination of this contract within three years from the date thereof, all matrices made under this agreement, or in the possession of the party of the second part, their successors or assigns, shall be sold back to the party of the first part at a fair cost valuation, less wear and tear.

Fourteenth.—No forfeiture shall be made by party of the second part for non-fulfillment of any provision of this contract, due to any injunction for infringement, and no royalty shall be claimed by party of the first part, so long as the sale of gramophones and sound records may be suspended by reason of any injunction against party of the second part, their successors or assigns, for infringements of the patents under this agreement, and in case the rights and franchises conveyed or intended to be conveyed by this contract to party of the second part be declared invalid, all advance royalties in excess of 10% of the price for the goods actually sold and paid for shall be recoverable from party of the first part.

In testimony whereof, we have set our hands and affixed our seals.

THE UNITED STATES GRAMOPHONE COMPANY,
By

E. BERLINER,

[Seal of United States Gramophone Company.]

President.

WILLIAM C. JONES, [SEAL]

Received for record, October 21st, 1895, and recorded in Liber S-52, page 207, of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereunto affixed.

JOHN S. SEYMOUR,

Commissioner of Patents.

[Seal of United States Patent Office.]

Exd. F. C. T.

THIS AGREEMENT, made this 2nd day of September, 1895, by and between *Emil Berliner*, of Washington, D. C., party of the first part, and *W. C. Jones*, of New York City, N. Y., party of the second part, *Witnesseth*:

THAT WHEREAS, a contract of even date has been made by and between the United States Gramophone Company, of Washington, D. C., party of the first part and *W. C. Jones*, of New York City, N. Y., party of the second part, relating to the manufacture, sale and leasing of gramophones and gramophone goods,

AND WHEREAS, said *Emil Berliner* is the patentee and was the sole owner of all patents pertaining to said inventions;

AND WHEREAS, the services of said *Emil Berliner* are necessary to the perfecting of certain other gramophone machines and applications of the gramophone devices to successfully place the same on the market;

Therefore, it is mutually agreed:

First.—That if any defect should be found to exist in the legal organization or rights of the United States Gramophone Company, effecting in any way, its ownership of said patents or any defects in the transfer of any patents pertaining to the gramophone heretofore owned by said *Berliner*, such defects shall in no way effect the rights, franchises, or privileges transferred and intended to be transferred to the said *W. C. Jones* and specified in the contract hereinbefore referred to.

Second.—It is herein agreed by the party of the first part that he will execute upon the demand of the party of the second part, at his own expense, any other legal documents which may be necessary to perfect in said *W. C. Jones*, the rights and franchises conveyed and intended to be conveyed to them by said contract with the United States Gramophone Company:

Third.—The said *Emil Berliner*, party of the first part, further agrees to allow his name to be placed on all gramophone goods manufactured by or for party of second part, their successors or assigns, and no other gramophone goods; to give his best efforts to the perfecting of all present de-

vices to which his patents are now applied; also to use his scientific knowledge and inventive skill in applying said patents to new devices;

Fourth.—It is hereby agreed that the manufacture of all matrices shall be carried on at Washington, and under the supervision of said Berliner, during the first three years of the continuance of this contract, unless with his consent, or in case of his refusal, death or disability, other arrangements shall be made, and said second party, its successors or assigns, agrees to pay the said Berliner a salary of five thousand dollars a year, in monthly payments, and also all expenses for laboratory, or other experiments, which may be undertaken by said Berliner, with the concurrence, or by the wish of said second party, and also all necessary traveling expenses for these purposes.

Fifth.—It is agreed that any assignment by party of the second part of its entire right of manufacture, lease and sale of gramophones and gramophone goods in the United States, shall devolve upon the assignees, all of the obligations assumed herein by party of the second part, and the obligations of said parties of the second part shall then cease.

In witness whereof, we have set our hands and affixed our seals.

E. BERLINER, [SEAL].
WM. C. JONES, [SEAL].

RECEIVED for record, October 21st, 1895, and recorded in Liber S-52, page 214, of Transfers of Patents.

In testimony whereof, I have caused the seal of the Patent Office to be hereonto affixed.

JOHN S. SEYMOUR,
Commissioner of Patents.

[Seal of United States
Patent Office.]

Exd. F. C. T.

THIS AGREEMENT, made the 4th day of October, A. D., one thousand, eight hundred and ninety-five, (1895), between the *United States Gramophone Company*, a corpora-

tion, organized under the laws of the State of West Virginia, with its principal office in Washington, D. C., and hereinafter referred to as the party of the first part, and W. C. Jones, of New York City, New York, hereinafter referred to as the party of the second part, *Witnesseth That*,

WHEREAS, the parties of the first and second parts have entered into an agreement, dated the 2nd day of September, A. D., 1895, by which the party of the first has granted to the party of the second part, certain rights to all inventions of Emil Berliner, Esq., which have been or which shall hereafter be made, having relation to the recording and reproduction of sound, and including the inventions described in Letters Patent of the United States, Numbered, dated and designated, as follows: (although not mentioned by number, date or designation in the said agreement), viz.: No. 372,786, dated November 8th, 1887, for a Gramophone; No. 382,790, dated May 15th, 1888, for a process of reducing records of sound; and No. 534,543, dated February 19th, 1895, for a Gramophone;

AND WHEREAS, the parties hereto have agreed to certain modification in the third article of the said agreement;

Now Therefore, in consideration of one dollar by each of the said parties to the other, interchangeably paid, the receipt of which hereby each acknowledges, and for other valuable and mutual consideration,

It is hereby mutually covenanted and agreed by and between the said parties that the said third article of the said agreement shall and the same is hereby amended so as to read as follows, viz.:

Third.—Second party agrees to pay to party of the first part, upon the signing of this contract, the sum of one thousand, five hundred dollars, and within sixty days from the date of this contract, (September 2nd, 1895), the further sum of three thousand, five hundred dollars, and within three months from the said date, the further sum of five thousand dollars, and within six months from the said date, the still further sum of five thousand dollars, (failing in which this contract

shall be null and void and no damages shall be recoverable by or from either party), which sums shall be an advance payment upon the royalties payable during the first year of the continuance of this contract. Said second party further agrees that the royalties to be paid to said first party, during the second year shall not be less than \$35,000.00, and that the aggregate of royalties to be paid to said first party during the first three years of this agreement shall amount to at least \$75,000.00, which amount may be made up by said second party within said three years, *provided nevertheless* that if the said second party or his assigns shall, by energy, business ability and sufficient working capital, show that he or they are doing their best to make a success of the gramophone business, and if then, for causes which cannot be foreseen, the royalty payable and due at the rate fixed in the second article of this agreement to the party of the first part, during the second year amount to at least \$20,000.00, but not to \$35,000.00, then the three years hereinbefore mentioned in this article within which the amount of royalty to be paid shall amount to \$75,000, shall be extended by the addition of another year, to make four years in which to make up the amount of royalties to be paid to the sum of \$75,000, but, if the royalties payable under the said Second Article during the second year do amount to \$35,000, then the said extension shall not be given. After said three years, of the additional fourth year, if such an extension is made, it is agreed by the said second party that he or his assigns will diligently and in a businesslike manner prosecute the gramophone business in the interest of the gramophone invention and in doing so, he and they shall be absolved from any fixed minimum amount of royalties to be paid annually.

And it is further mutually covenanted and agreed, That the said party of the first part shall execute all such further instruments in writing as counsel may advise or require, for completely vesting in said party of the second part, his ex-

Executors administrators or assigns, all the rights described in said agreement.

In Witness Whereof, The party of the first part has caused this agreement to be signed in its name by its President and sealed with its corporate seal attested by its Secretary, and the party of the second part has hereunto set his hand and seal the day and year first above written.

THE UNITED STATES GRAMOPHONE COMPANY,

By E. BERLINER,

[Seal of United States Gramophone Company.]

President.

Attest:

JOSEPH AUERBACH
Secretary.

WM. C. JONES. [SEAL]

RECEIVED for record October 21st, 1895, and recorded in Liber S-52, page 216, of Transfers of Patents.

In Testimony Whereof, I have caused the seal of the Patent Office to be hereto affixed.

- JOHN S. SEYMOUR,

Commissioner of Patents.

[Seal of United States Patent Office.]

Exd. F. C. T.

EXHIBIT B.

Folio 1. IN THE CIRCUIT COURT OF THE UNITED STATES, IN AND FOR
THE WESTERN DISTRICT OF VIRGINIA.

<i>Frank Seaman, Plaintiff</i>	}	In Equity.
against		
<i>Berliner Gramophone Company, Defendant.</i>		

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF VIRGINIA:

" 2. Frank Seaman, a citizen of the State of New York, residing in the City of Yonkers, in said State, brings this his bill against the Berliner Gramophone Company, a corporation organized under and by virtue of the laws of the State of Virginia, and having its principal place of business in the City of Roanoke, in the State of Virginia, and thereupon your orator complains and says:—

I. That the defendant, the Berliner Gramophone Company, is a corporation chartered and organized under and by virtue of the Laws of the State of Virginia, and having its principal office and place for the transaction of business in the City of Roanoke, in said State.

" 3. II. That heretofore and prior to the 10th day of October, 1896, the defendant acquired and secured under and by virtue of certain agreements made and executed by and between the United States Gramophone Company, a corporation organized under and by virtue of the laws of the State of West Virginia, and one William C. Jones, which contracts are dated on the 2nd day of September and the 4th day of October, 1895, respectively, and under and by virtue of another certain agreement dated on the 2nd day of September, 1895, by and between one Emil Berliner and said William C. Jones; the rights secured by said Jones under

all said agreements having been duly transferred to the defendant herein; the exclusive right to manufacture, vend and use under the patents and rights of said Emil Berliner as in said contracts, copies whereof are hereunto annexed in Exhibit "A," and made a part hereof, is more fully set forth, and by reference to which will more fully and at length appear, a certain invention, device or machine known and described in said patents and contracts, and known in commerce, as the gramophone.

Folio 5.

III. That the defendant likewise before such 10th day of October, 1896, having entered upon the manufacture and sale of talking and sound reproducing machines, so known as gramophones, under and pursuant to such contracts, agreements, or license, your orator contracting with defendant, became and was interested in the sale and disposition of the same within the State of New York and elsewhere, and was engaged in the business of selling and introducing such machines.

IV. That thereafter and on or about said 10th day of October, 1896, your orator and the defendant herein duly made and entered into a certain contract, or agreement, dated on that day, a copy whereof is hereunto annexed marked Exhibit "A," and made a part hereof, the original being in the possession of your orator and ready to be produced to the Court. That such agreement was duly sealed by the parties hereto with their respective seals, and was likewise signed in the name of the defendant by Thomas S. Parvin, its President, pursuant to a vote of its board of directors duly authorizing him so to do, and by your orator individually, and to such agreement, as a part of the same, were duly annexed copies of said agreements so as aforesaid executed by and between the United States Gramophone Company and Emil Berliner and William C. Jones, dated as aforesaid, and likewise a receipt for the sum of two thousand four dollars, signed by the defendant, and a letter dated on the same day, expressing the conditions upon which said agreement should be signed and delivered, and also, and thereafter, a receipt for the sum of three thousand nine hundred ninety-six dollars, dated on the 12th day of October,

6.

" 7.

" 8.

1896, signed by the defendant, copies of all of which are hereto annexed and made a part hereof, and the originals whereof are in the possession of your orator and ready to be produced to the Court; the payments recited whereby and the terms and conditions specified wherein, having been fully and in all respects made, performed and complied with by your orator, and the monies specified whereby having been accepted, received and applied to its own use by the defendant.

Folio 9.

V. That said agreement provided, among other things, that the defendant should manufacture solely for, and sell exclusively to your orator, the gramophones and gramophone goods so as aforesaid controlled by it, and for the manufacture and sale whereof it held the exclusive license under the patents and contracts hereinbefore set forth, and that your orator should purchase large quantities thereof, and should sell and distribute the same, all as in and by said contract is fully and at length set forth.

" 10.

VI. That under and by virtue of patents of the United States of America, as aforesaid, the defendant possessed the sole and exclusive right to manufacture, vend and use in the United States of America, as specified, the gramophone and gramophone goods aforesaid, which said right is in and by said agreement acknowledged and conceded by your orator, and is now and for many years to come will be the sole and exclusive property of said defendant and as provided by said agreement, that of your orator and of the various heirs, executors, administrators, successors and assigns of the parties, as in and by said contract and by law is provided, the same being of great value.

" 11.

VII. That upon and after the execution and delivery of said agreement your orator entered actively upon the business therein described, and agreed to be conducted and at once engaged in carrying out the terms and provisions of the said agreement on his part specified to be performed, and purchased and paid for large amounts of goods manufactured by the defendant under said patents and delivered by it to your orator pursuant to the terms of said agreement.

VIII. That in so doing your orator spent and caused to

he spent great sums of money in advertising and introducing such goods and building up a market for the same, and purchased from the defendant goods of great value which have been fully paid for by him, as follows:

Folio 12.

During the year 1897	\$88,611 14
During the year 1898.....	\$239,849 58
During the year 1899	\$188,966 59
During the months of January, February,	

March, April and May, 1900	\$94,457 93
----------------------------------	-------------

IX. That in addition to such amounts so paid for gramophones and gramophone goods purchased from the defendant under said contract, your orator has paid to the defendant for artists, musicians and others employed by it for the purpose of making and producing matrices, stamps, or dies, during the year 1899, and said four months of the year 1900, the sum of \$12,583.55, and likewise has paid to defendant to be used by it in making and finishing such matrices, stamps, or dies, and preparing them for the manufacture and production of sound records or disks, during such period the sum of \$7,264.16, and that pursuant to such contract the defendant charged upon all such disbursements and expenses a profit of forty per cent. upon all amounts paid out by it and which constitutes a part of the aforesaid sums paid by your orator, and also during such times your orator has paid to the defendant for the rent of premises in the City of Philadelphia, the sum and amount of \$83.00 per month, one-third of said premises being occupied by your orator as a storehouse and two-thirds thereof being occupied by defendant in the production of matrices and the operations connected therewith at the expense and for the account of your orator.

13. "

" 14.

X. That in the operation of said gramophone so as aforesaid invented, patented and controlled by said Berliner, and the rights under patents whereupon have been, as aforesaid, transferred to the defendant and contracted to your orator; and recitation, declamation, talk, music or other sound, which it is desired to reproduce mechanically, is first delivered into what is known as a recording apparatus wherein the impact of such sound upon a diaphragm causes waves to be recorded upon a revolving disk. The waves thus

recorded are by mechanical and chemical processes fixed, and thereupon a matrix, or die, is produced by mechanical and chemical processes. The die thus made is hard, and from the same stamped, from time to time such disks as may be required. These disks are known and designated in the contract aforesaid, and are generally known as "records." When it is desired to reproduce any of the sounds so fixed upon a record as aforesaid, the same is placed upon a gramophone, or machine, manufactured under and pursuant to such patents, and caused to revolve, and by mechanical means the waves so produced by the recording machine described, and reproduced and transferred to such record, actuate a needle in the gramophone, which in turn actuates a suitable diaphragm, and thereby the original sound is reproduced by the gramophones and becomes audible.

XI. That the manufacture and production of record, so as aforesaid controlled and by said contract reserved to itself by defendant, was and is in its perfected, elaborated and commercial valuable form a difficult unknown and secret process incapable of being carried out or performed by plaintiff and known only and exclusively to defendant.

XII. That such sums so as aforesaid paid by your orator for the employment of musicians and others, and for the manufacture of matrices, were expended and employed by defendant for your orator for the purpose of furnishing records, as aforesaid, for sale and use with such gramophones as your orator might sell or had sold, or from time to time might have sold. And that such gramophones, or sound reproducing machines, without such records are wholly inoperative and of no value.

XIII. That such contract provides that your orator shall in no event manufacture or make or in anywise cause to be made any such records or matrices, or do anything thereto, and provides that defendant shall fully and exclusively supply him with the same.

XIV. That your orator has in all respects well and truly and according to the letter and spirit of said contract, performed the same on his part, but that the defendant has failed and refused, and still refuses, to perform the same on its part.

XV. That in and during the year 1899, the defendant failed and refused to supply and deliver to your orator gramophones, records and gramophone goods with reasonable dispatch and as the same were from time to time ordered by your orator, and thereby the ability of your orator to sell and distribute the same was greatly limited and curtailed, and he was and is unable to fill orders which he then and subsequently received, and is constantly receiving, for such machines, records and goods, whereby the number and amount of his sales have been and are greatly lessened and curtailed.

XVI. That in and during the year 1897 your orator purchased from defendant two hundred forty-eight thousand six hundred and fifty two records, wherefor he paid to defendant the sum of \$41,266.76. That during the year 1898 your orator purchased seven hundred thirteen thousand seven hundred fifty-three records, wherefor he paid to defendant the sum of \$110,633.01, and that during the year 1899 your orator purchased from defendant five hundred sixty-nine thousand one hundred fifty-four records, wherefor he paid to the defendant the sum of \$91,174.27, and that during the months of January, February, March, April and May, 1900, your orator purchased from defendant two hundred fifty-five thousand seven hundred eighty-four records, wherefor he paid the sum of \$40,332.67. And that but for such declination and refusal on the part of the defendant to reasonably supply your orator with such goods as ordered he could have purchased such records far in excess of such numbers, and could have paid far greater amounts than thus above set forth.

XVII. That the defendant has in its possession great numbers of matrices made so as aforesaid for your orator and at his expense, and likewise has in its possession various and numerous records, so as aforesaid stamped from such matrices finished and ready for delivery to your orator, but the exact numbers and character whereof are unknown to your orator. That from such matrices defendant is engaged in stamping, and is threatening to continue to stamp, great numbers of records, not for the use or benefit of your orator, but for

the use and benefit of the defendant, and for the purpose of selling the same to the customers of your orator and other persons to whom it is threatening to dispose of the same to the irreparable loss and damage of your orator and the subversion of his said business.

XVIII. That your orator subsequently to the 18th day of April and during the month of May, 1900, ordered large numbers of records from defendant, but defendant wholly failed and refused to deliver the same, although such orders were given in the usual manner for delivering according to the established custom and course of such business and your orator duly demanded such delivery and the filling of such orders and said defendant, without making any objection to the sufficiency, regularity, or definiteness, of such orders has refused, and now refuses and wholly declines to deliver to your orator such, or any, records. That notwithstanding such declinations and refusals so as aforesaid to deliver records, the defendant continues to use the matrices so as aforesaid made, supplied and paid for by your orator in stamping and producing records, thereby wearing out and destroying such matrices greatly to the damage and detriment of your orator. And defendant likewise has continued to employ the talent or persons furnished by your orator to produce such matrices as aforesaid and continues to receive from your orator monies for the payment of the same, and to send to your orator bills for the amounts paid in obtaining such talent. That the bills so as aforesaid rendered to your orator during the year 1900 are as follows:

During the month of January	\$666 70
During the month of February.....	\$784 60
During the month of March	\$1492 90
During the month of April	\$207 05

XIX. That the records so as aforesaid ordered by your orator, and which the defendant has so refused to supply are in number 19,906, and are of the value, exclusive of the cost of said talent and such matrices at the prices paid by your orator to defendant, of \$3085.43, and are fully and at length designated and described in the manner fixed and determined by defendant, and are set forth in number and

places of delivery, specified in the list of orders hereunto annexed and made a part hereof, and marked Exhibit "B,"

XX. That various and large numbers of records are constantly required and demanded from your orator by those who have purchased from him such gramophones so adopted to use the same, and your orator is, has been, and will be, wholly disabled and incapacitated from supplying to his said customers, or to any persons, such, or any, records by reason of such contract and through the declination and refusal on the part of the defendant to supply the records so in part paid by, and produced for the use of, your orator, and now in the possession of the defendant, and therein and thereby your orator is and will be incapacitated and prevented from selling, sealing and distributing gramophones and records now in his possession by reason of the failure and refusal of defendant to replenish, restore and keep complete and up to date his stock, and to furnish, sell and deliver to your orator such records so as aforesaid produced and to be produced from matrices furnished from talent procured at his request and paid for by him.

XXI. That your orator has ordered and offered to pay for, and is now ready and hereby offers to take and pay for large numbers of machines and records under and pursuant to such contract, but that the defendant has refused and now wholly refuses to sell or deliver to your orator machines or records so ordered by him under and pursuant to such contract, although your orator has in all respects lived up to and performed the terms and conditions of the same on his part.

XXII. That a great and large demand for thousands of such machines and records exists, and your orator desires to supply such demand and to obtain from defendant and to sell and distribute such machines and records, but he is prevented from so doing and from carrying on his said business as hereinbefore specifically averred by such unjust and arbitrary refusal on the part of defendant to furnish to him said goods.

XXIII. That the profits upon the said business to your orator are, and have been, very large; and that the damage to your orator and to the business which he has built up

as aforesaid, and the loss which had accrued, and will accrue to him by reason of such unjust, arbitrary and wrongful refusal on the part of the defendant to supply such records, is, and will be, wholly irreparable and incapable of ascertainment, computation or determination, vastly in excess of two thousand dollars, to it, being in excess of one hundred thousand dollars, and that your orator cannot be compensated in damages for such loss; and that, if the defendant shall continue such unjust and arbitrary refusal to deliver goods under and pursuant to said contract, your orator will lose the whole value and benefit of his business, and will in no way be able to recompense himself for the loss of the same.

XXIV. That such disks or records which are required by your orator for, in and about the carrying out of said contract, and the conduct of his said business, are already manufactured, and are in the possession of the defendant as aforesaid, and are ready to be delivered. That the same are satisfactory in kind, quality and condition to your orator, who has ordered and is willing to receive the same and pay therefor pursuant to said contract and to continue ordering from time to time as such records shall be required by him in his said business, and that nothing is required to be done by defendant saving only the delivery of the said records to your orators.

XXV. That your orator has demanded from defendant that it furnish to him samples of new records recently made for your orator as it has heretofore and always, until recently, without question, furnished to him under and pursuant to said contract, samples of disks or records produced from matrices so as aforesaid made for your orator, as the same have been from time to time perfected; but that the defendant has wholly failed and refused, and still refuses, to furnish your orator with such samples, although the defendant has required your orator to pay for such matrices, and for the talent so as aforesaid employed in their production, and has rendered and continues to render to your orator bills for the same, all of which have been duly paid by your orator, saving only one bill for musical talent employed during the month of April, 1900, amounting to the sum of \$807.05, and

which your orator is ready and willing to pay when the defendant shall furnish samples or shall withdraw its refusal to furnish samples of or records from the same.

XXVI. That your orator has duly demanded from defendant a statement of the matrices so made and on hand, and likewise of the records, and that the same be held exclusively to his use and subject to his order, but the defendant has wholly disregarded such request, and has wholly failed and refused to furnish such statement, and in contravention of its said agreement and of the rights of your orator is continuing and threatening to continue all of its said unlawful acts, and alleging its rights and authority so to do.

XXVII. That your orator pursuant to the contract aforesaid made between him and the defendant, has on different occasions demanded arbitration as to disputes which had arisen between your orator and defendant regarding the interpretation of said agreement of October 10th, 1896, and that defendant has for months ignored such demands. That finally and on the 25th day of May, 1900, your orator duly demanded that arbitration be had upon the following questions:

Whether your orator should be compelled to pay for talent employed by defendant in producing matrices for records until defendant should furnish your orator samples of records made from such matrices, or assure your orator that it would be so, and would fill orders for records from the same.

Whether your orator is entitled to a statement of the matrices made for him and of the records pressed from each.

Whether the defendant is under obligation to fill orders for records which your orator has sent to it, which defendant has declined to honor.

Whether defendant is entitled to charge to your orator's account forty per cent. in addition to the amount paid by it for talent in making records wherein it has rendered to your orator the bills for talent employed.

Whether defendant is entitled to use the laboratory maintained at your orator's expense in making any matrices or records other than those ordered by your orator.

Whether defendant is entitled to use matrices produced

from talent ordered by your orator and charged to his account, except as and when your orator orders records to be made therefrom.

But that the defendant has failed and refused, and still fails and refuses to arbitrate such questions, or any questions, arising under such contract with your orator.

Wherefore, your orator stands in need of equitable relief, having no relief save in this Honorable Court, and prays:

First:—That your Honors grant to your orator your writ of injunction, special until the hearing, and perpetual thereafter, enjoining, and restraining the said Berliner Gramophone Company, the defendant, and all persons claiming to act under its authority, from selling, delivering, or parting with, any of the gramophones, records, matrices, or goods, made by it in compliance with said contract between the parties hereto, and also any other goods wherein your orator has an interest to any person other than those designated by your orator, save in so far as the defendant is reasonably entitled to sell and deliver the same to its stockholders, as provided by said contract.

Second:—That your Honors grant unto your orator your writ of injunction restraining the said Berliner Gramophone Company, the defendant, and all persons claiming to act under its authority, from using or employing said matrices, so as aforesaid manufactured for and at the expense of your orator, in stamping, or producing records other than such as shall be suitable for and requisite to supplying your orator with such records as he may require and order from time to time.

Third:—That your Honors grant unto your orator your writ of injunction commanding the said Berliner Gramophone Company, the defendant, its officers and agents, to forthwith deliver to your orator the records sold as aforesaid stamped from matrices, manufactured for and at the expense of your orator and ordered by him and now ready to be delivered in compliance with the terms of the contract entered into between your orator and the defendant, and according to their usual course of business.

Fourth:—That the said Berliner Gramophone Company,

the defendant, may be decreed and required to pay to your orator full compensation for all loss and damage which he has sustained by reason of the aforesaid premises.

Fifth:—That the said Berliner Gramophone Company, the defendant, may be decreed and required to render to your orator an account of matrices and records now in its possession or under its control.

Sixth:—That your orator may have such other and further relief in the premises as in nature of the circumstances of the case may require, and which to your Honorable Court may seem equitable.

May it please your Honors, The premises considered to grant unto your orator not only a writ of injunction issuing out of and under the seal of this Honorable Court enjoining the said defendant as heretofore prayed but also a writ of subpœna to be directed to the said Berliner Gramophone Company, the defendant, therein and thereby commanding it at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there, full, true, direct and perfect answer make but not upon oath, or affirmation, the benefit of which is expressly waived by your orator, to all and singular the premises, and further to stand to, perform and abide by such other order, direction, and the plea therein as to this Honorable Court shall seem meet, and which may be made against it in the premises and as shall be agreeable to equity and good conscience.

And your orator will ever pray.

FRANK SEAMAN.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
COUNTY OF NEW YORK,
CITY OF NEW YORK, } ss.

On this 20th day of June, one thousand nine hundred, before me personally appeared Frank Seaman, to me known and known to me to be the above plaintiff, who made solemn oath that he hath read the foregoing bill of complaint subscribed by him and knows the contents thereof and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

FRANK SEAMAN.

Sworn to and subscribed before me this 20th day of June, 1900.

[SEAL]

SAM. M. HITCHCOCK,
U. S. Commissioner, Southern
District of New York.

1900. TO BE DELIVERED TO :		DESCRIPTION BY NUMBER :			
April 19. Order No. 6701. 100 Records.	Chicago Branch.	01133 — 25			
		01137 — 25			
		01138 — 25			
		01139 — 25			
		0954 — 2	0981 — 5	0936 — 10	01052 — 10
		0982 — 3	01006 — 5	01040 — 10	0969 — 10
		0957 — 2	01008 — 5	01041 — 10	01071 — 10
		0956 — 3	01007 — 5	0980 — 10	0990 — 10
		0951 — 3	0935 — 5	0965 — 10	01018 — 10
		0958 — 3	0984 — 5	0993 — 10	0939 — 10
		0956 — 3	0957 — 10	0970 ² — 10	01030 — 10
		0952 ² — 3	0956 — 10	0977 — 10	0968 — 10
April 19. Order No. 6702. 884 Records.	Sherman, Clay & Co.	0953 — 3	0978 — 10	01010 — 10	0995 — 10
		0952 ² — 3	0987 — 10	0937 — 10	01013 — 10
		01031 — 10	01020 — 10	01039 — 10	01011 — 10
		0963 — 10	09002 — 15	01024 — 15	0942 — 15
		0975 — 15	0665 ² — 15	0946 — 15	0943 — 15
		01037 — 15	0946 ² — 15	01017 — 15	01015 — 20
		0967 — 20	0947 — 20	0948 — 20	0938 — 20
		0974 — 20	01003 — 20	01019 — 25	01028 — 10
		01029 — 10	01014 — 10	01001 — 10	
		01005 — 10	0986 — 10	0945 — 15	
		01012 — 10	0941 — 10	0935 — 15	
		0994 — 10	01021 — 10	0988 — 15	
		01016 ² — 10	01022 — 10	0966 — 20	
Order No. 6703. April 19. 27 Records.	Albany Branch.	0967 — 2	0978 — 3	064 — 3	0623 — 3
		0624 — 3	0945 — 3	0912 — 3	0889 ² — 3
		0213 ² — 4			
Order No. 6706. April 21. 525 Records.	Stock.	1304 — 5	3646Z — 50	981W — 50	3637 — 50
		8009Z — 50	61T — 100	0554 — 100	136X — 100
Order No. 6707. April 24. 65 Records.	Providence Branch.	01134 — 20	01036 — 20	01130 — 20	
		01133 — 5			

TO BE
DELIVERED
TO:

DESCRIPTION BY NUMBER:

0982 — 3	01012 — 3	01043 — 3	01051 — 3
01005 — 3	01042 — 3	01044 — 3	309 — 5
1896Z — 5	01006 — 3	0298 — 3	01045 — 3
310Z — 5	3400ZZ — 5	01007 — 3	0353 — 3
01047 — 3	1462Y — 5	3680 — 5	01008 — 3
0954 — 3	01048 — 3	1498 — 5	3681 — 5
01009 — 3	0955 — 3	01049 — 3	1499 — 5
8010 — 5	1011 — 3	0956 — 3	01050 — 3
1894 — 5	8021 — 5	0123 — 5	0126 — 5
0128 — 5	0157 — 5	0166 — 5	0179 — 5
0184 — 5	0306 — 5	0313 — 5	0358 — 5
0470 — 5	0472 — 5	0456 — 5	0600 — 5
0613 — 5	0625 — 5	0633 — 5	0713 — 5
0782 — 5	0784 — 5	0810 ⁴ — 5	01002 — 5
01003 — 5	01019 — 5	01010 — 5	01013 — 5
01014 — 5	1882Z — 5	3439Z — 15	1940 — 15
1941 — 15	3410Y — 15	3438 — 15	3440Z — 15
3441Y — 15	3446Z — 15	3447 — 15	3643Z — 15
4275Z — 15	0578 ² — 15	4265Z — 15	041 — 15
043 — 15	044 — 15	051 — 15	054 — 15
060 — 15	062 — 15	065 — 15	0136 — 15
0169 — 15	0177 — 15	0181 — 15	195 — 15
191 — 15	0199 — 15	0200 — 15	0213 ² — 15
0226 — 15	0227 — 15	0229 — 15	0234 — 15
0237 — 15	0254 — 15	0310 — 15	0311 — 15
0312 — 15	0314 ² — 15	0318 — 15	0319 — 15
0320 — 15	0371 — 15	0380 — 15	0567 — 15
0413 — 15	0414 ² — 15	0461 ³ — 15	0561 — 15
0563 — 15	0569 — 15	0572 — 15	0570 — 15
0571 — 15	0585 — 15	0567 ⁴ — 15	0620 — 15
0622 — 15	0624 — 15	0643 — 15	0644 — 15
0645 ⁵ — 15	0658 — 15	0661 — 15	0665 ⁴ — 15
0669 — 15	0673 — 15	0691 — 15	0696 — 15
0669 ³ — 15	0701 — 15	0707 — 15	0710 ² — 15
0711 — 15	0717 — 15	0719 — 15	0728 — 15
0715 — 15	0826 ² — 15	0832 — 15	0869 — 15
0872 — 15	0893 ² — 15	0895 — 15	0896 — 15
0897 — 15	0899 — 15	0912 — 15	0913 — 15
0922 — 15	0923 — 15	0924 — 15	0925 — 15
0934 — 15	0935 — 15	0936 — 15	0937 — 15
0940 — 15	0942 — 15	0946 — 15	0945 — 15
0947 ² — 15	0948 ² — 15	0963 — 15	0968 — 15
0977 — 15	0985 — 15	0993 — 15	0995 — 15
01024 — 15	01026 ² — 15	01028 — 15	01061 ² — 15

Order
No. 6708.
April 26.
2196
Records.

Chicago
Branch.

1900.	TO BE DELIVERED TO:	DESCRIPTION BY NUMBER:
		01060 — 15 01017 — 15 01016 ² — 15 01012 — 15 01053 — 15 01065 — 15 01074 — 15 01075 — 15 01080 — 15 01082 — 15 01085 — 15 01086 — 15 01087 — 15 01091 — 15
Order No. 6709. April 26. 60 Records.	Boston Branch.	0651 — 5 0312 — 5 01087 — 5 0912 — 5 3412 V — 5 0913 — 5 01062 — 5 0389 ² — 10 0662 — 5 0890 — 10
Order No. 6710. April 26. 75 Records.	Chicago Branch.	01016 ² — 25 01156 — 25 01159 — 25
Order No. 6711. April 26. 1650 Records.	Stock.	129Z — 50 0836 — 100 4284Z — 100 01156 — 200 0489 — 100 0854 ² — 100 0195 — 100 01159 — 200 0645 ² — 100 0893 ² — 100 0587 ⁴ — 100 0635 ² — 100 303 — 100 01116 ² — 200
Order No. 6712. April 28. 30 Records.	Philadelphia Branch.	01130 — 12 01134 — 9 01136 — 9
Order No. 6713. April 28. 275 Records.	Chicago Branch.	01160 — 25 01165 — 25 01166 — 25 01163 — 25 01162 — 25 01157 — 25 01164 — 25 01168 — 25 01158 — 25 01161 — 25 01167 — 25
Order No. 6714. April 28. 3050 Records.	Stock.	0311 — 50 1207Z — 50 4807 — 50 026 — 100 0654 ² — 100 0658 — 100 0876 — 100 993U — 100 01161 ² — 200 01160 — 200 01163 — 200 01164 — 200 01165 — 200 01162 — 200 01168 — 200 01167 — 200 01166 — 200 01157 — 200 01158 — 200
Order No. 6715. May 1st. 24 Records.	Philadelphia Branch.	01137 — 4 01138 — 4 3636 — 4 01141 — 3 01134 — 3 01135 — 3 0541 — 3
Order No. 6716. May 1st. 63 Records.	Cincinnati.	01090 — 3 01134 — 20 0665 ² — 5 01080 — 5 1961 — 5 1930 — 5 01060 — 5 01087 — 5 01083 — 5 01131 — 5 01074 — 5 01081 — 5 0658 — 10 01061 ² — 10

1900.	TO BE DELIVERED TO :	DESCRIPTION BY NUMBER :			
Order No. 6717. May 1st. 15 Records.	Boston Branch.	01131 — 5	01134 — 5	01135 — 5	
Order No. 6718. May 1st. 450 Records.	Stock.	1961 — 50 0775 — 100	023 — 100 0561 — 100	0619 — 100	
Order No. 6719. May 3rd. 18 Records.	Philadelphia Branch.	0311 — 3 01105 — 6	0313 — 3	01087 — 3	0554 — 3
Order No. 6720. May 3rd. 1350 Records.	Stock.	19X — 50 1921 — 50 0314 ² — 100 0990 — 200	101 — 50 0201 — 100 0945 — 100 01087 — 200	1219 — 50 0236 — 100 140W — 100	1649Y — 50 0313 — 100 301Z — 100
Order No. 6721. May 4th. 93 Records.	Philadelphia Branch.	01051 — 1 0942 — 3 01085 — 3 0966 — 3 01061 ² — 9 01135 — 4	0613 — 3 01026 ² — 3 0624 — 3 01060 — 3 01134 — 9	0313 — 3 01085 — 3 0541 — 3 075 — 3 01137 — 7	01080 — 3 01083 — 3 0964 ² — 3 01024 — 9 01137 — 12
Order No. 6722. May 7th. 73 Records.	Philadelphia Branch.	01138 ² — 3 01135 — 7 01161 ² — 12 0945 — 3	0541 — 3 0116 — 7 221U — 3	705ZZ — 3 01137 — 7 0187 — 3	01130 — 3 01134 — 12 0181 — 3
Order No. 6723. May 7th. 700 Records.	Stock.	0225 — 100 0584 — 100 221U — 100	0238 — 100 0613 — 100	0542 ² — 100 175U — 100	
Order No. 6724. May 10th. 1150 Records.	Stock.	064 — 50 0913 — 100 01080 — 100 61T — 100	0657 — 100 0936 — 100 01081 — 100 0754 — 100	0765 ² — 100 01060 — 100 01030 — 100	
Order No. 6725. May 11th. 600 Records.	Stock.	01 — 50 1103Z — 50 0200 — 100	0105 — 50 1114 — 50 0624 — 100	123Y — 50 1308Z — 50	967YY — 50 3405X — 50

1900. TO BE DELIVERED TO:		DESCRIPTION BY NUMBER:			
Order					
No. 6526.		0775 — 14	01061 ² —100	01156 —100	
May 15th.	Stock..	01159 —100	01163 —100	01164 —100	
814		01165 —100	0889 ² —100	01067 —100	
Records.					
Order					
No. 6727.		01062 — 50	923Y — 50	1243Z— 50	
May 15th.	Stock.	0177 —100	0312 —100	0889Z—100	
1050		0942 —100	0946 —100	0967 —100	
Records.		0993 —100	01134 —200		
		61T — 25	964 — 25	1935 — 25	023 — 25
		081 — 25	075 — 25	0201 — 25	0208 — 25
		0246 — 25	0422 ² — 25	0460 — 25	0489 — 25
		0583 ² — 25	0584 — 25	0651 — 25	0654 ² — 25
		0891 — 25	01081 — 25	01063 — 25	01069 — 25
		01081 — 25	01087 — 25	01130 — 25	01131 — 25
Order		01134 — 25	01135 — 25	01136 — 25	0537 — 25
No. 6728.	Chicago	1940 — 10	060 — 10	0130 — 10	0181 — 10
May 24th.	Branch.	0191 — 10	0200 — 10	0213 ² — 10	0226 — 10
1039		0227 — 10	0561 — 10	0658 — 10	0717 — 10
Records.		0719 — 10	0893 ² — 10	0896 — 10	0913 — 10
		01087 — 10	01024 — 10	01060 — 10	01061 ² — 10
		01065 — 10	01080 — 10	01082 — 10	177W — 10
		0236 — 10	0536 — 10	0537 — 10	0619 — 10
		0753 — 10	0754 — 10	0990 — 10	01053 — 10
		0613 — 5	01047 — 7	01048 — 10	
		065 — 50	0136 — 50	0310 — 50	0478 — 50
		0545 — 50	0583 ² — 50	0640 — 50	0644 — 50
Order		051 — 50	0653 — 50	0702 ² — 50	0728 — 50
No. 6729.		0964 ² — 50	01016 ² — 50	01017 — 50	046 —100
May 25th.	Stock.	075 —100	0191 —100	0200 —100	0537 —100
2350		0541 —100	0622 —100	0526 ² —100	0753 —100
Records.		0758 —100	0944 —100	01131 —100	01136 —100
		01138 —100	0912 —200		
Order					
No. 6730		0972 — 50	7W — 50	964 — 50	1882Z— 50
May 28th.	Stock.	1894 — 50	3415Z— 50	8009Z— 50	8010 — 50
1150		1884Z— 50	0726 —100	01079 —100	01062 —100
Records.		01083 —100	01095 —100	3438 —100	8003 —100
Total on order, 19,996.					

EXHIBIT C.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA.

Frank Seaman, Plaintiff,

VERSUS

*Berliner Gramophone Company,
Defendant.*

In Equity.

Upon motion of the plaintiff, Frank Seaman, by Waldo G. Morse and Geo. E. Sipe, his counsel, and upon the reading of the plaintiff's bill, this day filed in this cause, properly verified, and the affidavits of Frank Seaman, Frances Crouch, John T. Judge, and Geo. R. Burt, filed therewith, verified on the 22nd of June, 1900, this Court doth order that an injunction be and the same is hereby awarded to restrain the defendant, the Berliner Gramophone Company, its servants, employes, and agents, until the further order of this court, from selling, delivering, or otherwise disposing of, and likewise from permitting or allowing any such selling, delivering, or disposing of, within the United States of America, any of the Gramophones, records, matrices or goods manufactured by or for the said defendant company and referred to in a certain contract made by it with the plaintiff and dated the 10th day of November, 1896, and exemplified with the plaintiff's bill, and, also, from likewise disposing of or allowing the disposition of, any other goods wherein the plaintiff has any interest, to any other person or persons than the said plaintiff or those designated by him, save in so far as the defendant is entitled reasonably to sell, deliver, or dispose of the same, to its officers, directors, and stockholders, not for sale, gain, or profit, and except in the District of Columbia for use therein as provided by said contract, and except, also, any deliveries they may now be entitled to make under certain contracts with

Tate, Jones & Nellis, mentioned in the bill, should any such right of delivery exist.

But said injunction shall not take effect until the plaintiff, or some one for him, shall execute and file in this cause a bond, with security to be approved by this court, in the penalty of five thousand dollars, conditioned to satisfy and discharge any costs and damages that may be incurred by the defendant by reason of the suing out of said injunction in case the same shall be dissolved.

JOHN PAUL
District Judge.

[SEAL]

JUNE 25th, 1900.

EXHIBIT D.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR
THE WESTERN DISTRICT OF VIRGINIA.

<p><i>Frank Seaman, Plaintiff,</i></p> <p style="text-align: center;">against</p> <p><i>Berliner Gramophone Company,</i></p> <p style="text-align: center;"><i>Defendant.</i></p>	}	In Equity.
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ANSWER OF THE BERLINER GRAMOPHONE COMPANY.

*To the Judges of the Circuit Court of the United States for the
Western District of Virginia :*

The Berliner Gramophone Company, the defendant above named, saving and reserving to itself all and all manner of exceptions to the manifold errors contained in the bill for answer thereto, or to such parts thereof as it is advised, it is material and necessary for it to answer, says:

1. The defendant admits to be true the first, second, third, fourth, fifth and sixth paragraphs of said bill.

2. The defendant admits the averments of paragraph 7 of the bill with the qualification that the plaintiff ceased to carry out the terms and provisions of his agreement with defendant on or before October 2nd, 1899.

3. The defendant admits the averments of paragraph 8 of the bill except the averment that plaintiff spent great sums of money in advertising; defendant is informed and therefore avers that most if not all of the money spent in advertising the Berliner Gramophone, was spent by the National Gramophone Company and not by Frank Seaman personally.

4. The defendant does not deny the averments contained in paragraph 9.

5. The defendant does not deny that the description of the Gramophone and records contained in paragraph 10 of the Bill is in the main correct.

6. The defendant admits the averments contained in paragraph 11.

7. That it is admitted as averred in paragraph 12 of the Bill that the sums paid by plaintiff for the employment of musicians and others, and for the manufacture of matrices, were expended and employed by defendant for plaintiff for the purpose of furnishing records for sale and use with such Gramophones as plaintiff might sell, and that such Gramophones without said records are wholly inoperative and of no value. Defendant however avers that plaintiff had no right under the contract to demand from the defendant the delivery of records to be used upon other talking machines than the Gramophone.

8. The defendant admits the averments contained in paragraph 13 of the Bill.

9. The defendant denies that plaintiff has in all respects well and truly and according to the letter and spirit of the contract performed the same on his part, and avers that the defendant has well and truly and according to the letter and spirit of said contract performed the same on its part.

10. In October, 1896, plaintiff organized under the laws of New York, a Corporation known as the "National Gramophone Company," the purpose of which was to take over the contract between the Berliner Gramophone Company and plaintiff. The said Company was organized without the approval of the Berliner Gramophone Company, and was never recognized in any way by the Berliner Gramophone Company as having any rights under the contract between it and plaintiff. From the organization of said Company plaintiff bought Gramophones, Gramophone supplies, and records from the Berliner Gramophone Company and turned them over to the National Gramophone Company, and said Company sold the same to the trade. In March 1899 the "National Gramophone Corporation" was organized under the laws of New York by the plaintiff, who supplied all the capital, the object and purpose of which was to manufacture and deal in talking machines "particularly the instrument commonly known as and called Gramophone." The Certificate of incorporation of the National Gramophone Company

is hereto annexed marked Exhibit A. On June 12th, 1899, the National Gramophone Company was dissolved, and subsequently all of its assets were assigned and transferred to the National Gramophone Corporation. The certificates of dissolution of the National Gramophone Company and of the organization of the National Gramophone Corporation are hereto annexed marked Exhibits B and C. The said National Gramophone Corporation was never recognized by the Berliner Gramophone Company as having any right under the contract between the Berliner Gramophone Company and plaintiff. Nevertheless, plaintiff in violation of his contract and without the permission of and against the will of the Berliner Gramophone Company, did, until recently, turn over to the said National Gramophone Corporation all or nearly all of the goods which he purchased from the Berliner Gramophone Company under the contract of October 10, 1896. Since October 2, 1899, plaintiff has not ordered from the Berliner Gramophone Company any gramophones, but has ordered large quantities of records nor has the Berliner Gramophone Company sold or delivered to the National Gramophone Corporation or to any other person or corporation, any gramophones, except such as were ordered by the said plaintiff on or prior to October 2, 1899. Since October 2nd, 1899, the said plaintiff has persistently demanded that the Berliner Gramophone Company shall sell and deliver to him under the Contract of October 10th, 1896 (it to purchase the same for that purpose) a certain talking machine manufactured by the Universal Talking Machine Company, which machine is an infringement of the Gramophone, and against which Company suit by the defendant herein is now pending for said infringement. The purpose of plaintiff in making this demand was to sell through the medium of the National Gramophone Corporation infringing machines manufactured by the Universal Talking Machine Company. The certificate of organization of the Universal Talking Machine Company is hereto annexed marked exhibit D. The plaintiff is a director of the National Gramophone Corporation, has been its Treasurer, and has owned, if he does not own at present, a large if

not controlling interest in its stock, and directs the business and policy of the said Company. Defendant avers that plaintiff has fraudulently and maliciously conspired with said Company, and used said Company to enable him to evade the provisions of the contract of October 10th, 1896, relating to the purchase by him of Gramophones, while at the same time he sought to avail himself of the privilege of buying records from the Berliner Gramophone Company.

11. The defendant denies all of the averments contained in paragraph 15 of the Bill.

12. The defendant does not deny the number of records and the prices therefor averred in paragraph 16 of the Bill to have been delivered to plaintiff during the years of 1897, 1898, 1899 and 1900. Defendant, however, avers that it has never declined or refused to furnish records to plaintiff, but that the later orders for records were held unfilled until plaintiff should furnish to defendant a proper explanation of why he no longer ordered Gramophones and why through his connection with the National Gramophone Corporation and the Universal Talking Machine Company he had ceased to promote the Gramophone business, thereby violating his agreement of October 10th, 1896.

13. It is true as averred in paragraph 17 of the bill that the defendant has in his possession great numbers of matrices, but the title to such matrices is in the defendant and not in the plaintiff. It is also true that defendant has in its possession various and numerous records, stamps, and such matrices, which it has always been ready and willing to deliver to the plaintiff, upon assurances from him that he would no longer continue to violate his agreement of October 10th, 1896. Defendant is advised and therefore avers that owing to the many and manifest breaches of the Contract of October 10th, 1896, by the plaintiff it has at the present time the right to sell such records to any other person to whom it may desire; but up to the present time defendant avers that it has not sold any of such records nor has it threatened to sell the same.

14. It is true as set forth in paragraph 18 of the Bill that plaintiff ordered from defendant large numbers of rec-

ords subsequent to the 18th day of April and during the month of May, 1900, but defendant has deferred filling such orders for the reasons herein before stated. Defendant has not sent any bills to the plaintiff for talent or matrices since May 1st, 1900. It is true that since the first of May defendant has used matrices made prior to the first of May, but is advised and therefore avers that it has a right so to do.

15. The defendant does not deny as averred in paragraph 19 the number and value of the records ordered by plaintiff, but it does deny that it has ever refused to supply said orders.

16. The defendant denies, as averred in paragraph 20 of Bill, that it has refused to fill the orders of plaintiff therein referred to, but has delayed filling the same for the reasons hereinbefore stated. Defendant further avers that practically the only customer which the plaintiff has had, is the National Gramophone Company, and its successor, the National Gramophone Corporation. All of the orders referred to in paragraphs 18 and 19, with one exception, contained a direction that the records should be delivered to the National Gramophone Corporation. During all this time the National Gramophone Corporation, whose business and policy the plaintiff directed, was engaged in the sale of a talking machine known as the Zonophone, which was an infringing machine on the Gramophone and to prevent which infringement the Berliner Gramophone Company had filed bills in Equity against the National Gramophone Corporation on May 26th, 1900. Defendant further avers that on May 18th, 1900, the National Gramophone Corporation announced that the Gramophone had been withdrawn from sale and that thereafter the Zonophone alone would be sold by them as appeared by advertisements of National Gramophone Corporation annexed hereto and marked Exhibits E and J. A large number if not all of the announcements and advertisements of the National Gramophone Company and the National Gramophone Corporation and Universal Talking Machine, including the announcement that the Gramophone had been withdrawn from sale, and that the Zonophone was to be sold in its place, were personally in-

serted by the plaintiff in various periodicals. On information and belief defendant avers that plaintiff personally handed copy for such advertisements to the advertising manager of *McClure's Magazine*, *The Chautauquan*, *Review of Reviews* and *Life*, and *Montreal Star*. Copies of letters addressed by the plaintiff to the *Montreal Star* are hereto annexed, marked Exhibits F and G.

17. The defendant denies all of the averments contained in paragraph 21 of the Bill.

18. The defendant admits as averred in paragraph 22 of the bill that a great and large demand for thousands of such machines and records exists, but it is without knowledge as to plaintiff's desire to supply such demands. Defendant denies all the remaining averments of said paragraph.

19. The defendant denies as averred in paragraph 23 of the bill that plaintiff's loss if he has sustained any, has been caused by any unjust and arbitrary refusal by defendant to deliver goods under and pursuant to the contract of October 10th, 1896. Defendant is advised and therefore avers that if the plaintiff has any cause of action against the defendant he has an adequate remedy at law and that a court of Equity has no jurisdiction.

20. The defendant does not deny the averments contained in paragraph 24 of the Bill, but is advised and therefore avers that under the circumstances hereinbefore fully set forth it was entitled in law to delay the delivery of records ordered by the plaintiff since April 19th, 1900.

21. The defendant admits as averred in paragraph 25 of the Bill that plaintiff has demanded from defendant to furnish to him samples of new records, but defendant denies that it has refused to furnish such samples. Defendant is advised and therefore avers that under the circumstances hereinbefore fully set forth it was not required in law to furnish such samples.

22. The defendant admits as averred in paragraph 26 of the bill that plaintiff has demanded from it a statement of the matrices made and on hand, and likewise of the records, but denies that it has refused to furnish such statement. Defendant is advised and therefore avers that for the reasons

hereinbefore fully set forth it was not in law obliged to furnish such statements.

23. The defendant denies that plaintiff was entitled under the circumstances hereinbefore and hereinafter fully set forth to demand arbitration as to any matters of dispute as to the construction of the contract of October, 1896.

24. And the defendant further answering says that under the contract of October 10th, 1896, plaintiff covenanted to order and purchase from defendant gramophones and gramophone goods to the minimum amount of Ten thousand dollars at manufacturing cost during each and every calendar month. Plaintiff also covenanted to "use his best efforts to promote the gramophone business in the United States," and to "advertise gramophones and gramophone goods prominently and freely as 'Berliner' Gramophones and 'Berliner' Gramophone goods." Plaintiff also covenanted not to "manufacture, buy, sell or use gramophones or gramophone goods, or any parts thereof, or other talking machine or parts thereof, except such as he buys from the licensor." Plaintiff also covenanted not to "make use of any other name than that of Emil Berliner in connection with gramophones and gramophone goods," and not to "detach or deface any patent marks or other marks or labels placed by the licensor upon its gramophones, gramophone goods and publications," and not to "add to them other marks or labels without the consent in writing of the licensor." Plaintiff also covenanted to exhibit at all times his books of account to defendant when requested.

Defendant charges that plaintiff has broken the above covenants as follows:

(a.) He has not from October 2, 1899, to the date of the filing of this bill ordered gramophones and gramophone goods to the minimum value of Ten thousand dollars at manufacturing cost during each and every calendar month.

(b.) Plaintiff has not used his best efforts to promote the gramophone business, but on the contrary has constantly endeavored to injure said business by combining with the National Gramophone Corporation and the Universal Talking Machine Company, in placing upon the market and promot-

ing the sale of the Zonophone, a machine which infringes the Gramophone. Instead of promoting the gramophone business he has done all in his power to promote the sale of a machine made and sold by a rival company.

(c.) Plaintiff has not advertised gramophone goods prominently and freely as "Berliner" gramophones and "Berliner" gramophone goods." On the contrary, he has systematically suppressed the name "Berliner" in his advertisements, and in those of the National Gramophone Corporation which he controls, and in said advertisements he has also in many cases substituted the word "Zonophone" or the word "vocalophone" for the word "Gramophone."

(d.) Plaintiff secretly and without the knowledge of the defendant, early in the year 1898 manufactured gramophone records. Defendant had no information of this breach of contract on the part of the plaintiff until shortly before the filing of the bill in this action.

(e.) Plaintiff has caused marks and labels placed by defendant upon its gramophone goods to be detached and defaced. In the spring of 1898, plaintiff instructed C. G. Child at that time an employee of the National Gramophone Corporation that he should not be too particular about the patent stamp bearing the name of E. Berliner Gramophone, with dates of patent, stating that he, plaintiff, did not care how much that was blurred or obliterated.

(f.) On December 8th, defendant formally demanded that the plaintiff exhibit his books of account in order to enable defendant to determine whether the plaintiff had complied with the contract of October 10th, 1896, relating to advertising. Plaintiff, however, refused to comply with defendant's request, and has never at any time exhibited to defendant the proper books of account which would enable the defendant to ascertain the information upon which the question in dispute had arisen.

(g.) Plaintiff through his control of the National Gramophone Corporation permitted a consent decree to be entered against it in a suit in equity instituted by the American Gramophone Company against Frank Seaman and the National Gramophone Corporation, which suit was brought to

restrain the sale of gramophones and alleged the infringement of the graphophone. The consent decree was entered on May 5th, 1900. On May 10th, 12th, 18th, and June 27th, 1900, the notices or circulars marked "Exhibits H, I, J, and K" were all sent out from the National Gramophone Corporation's office.

25. Defendant further states that since April 1900 when the defendant came to a full knowledge of the acts and purposes of the plaintiff, it constantly appealed to him to explain his conduct and to comply with the terms of his contract. Full opportunity was given him to do so, and it was not until after the present bill was filed that defendant on July 24, 1900, canceled the contract, and on July 26, 1900, notified the plaintiff thereof. The resolution of the Berliner Gramophone Company canceling the contract and the notice to plaintiff thereof and affidavit of service are hereto annexed marked Exhibits L, M, and N.

26. Defendant is advised and therefore avers that owing to the bad faith which the plaintiff has displayed toward the defendant and his numerous breaches of the contract of October 10, 1896, plaintiff has no standing in a court of equity to demand the relief prayed for in his bill.

Wherefore defendant having answered prays that said bill be dismissed with costs.

Solicitors for defendant.

EXHIBIT E.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA,

Frank Seaman, Complainant,

vs.

*The Berliner Gramophone Com-
pany, Defendant.*

In Equity.

On this the 24th day of September, 1900, came Frank Seaman, the plaintiff in the above entitled cause, by counsel, and moved the Court for a rule against the defendant, the Berliner Gramophone Company, to show cause why the injunction awarded herein on the 25th day of June, 1900, should not be enlarged, submitting therewith the three several affidavits of the plaintiff, heretofore filed herein, with the exhibits accompanying said affidavits.

Upon consideration whereof, and of the record of the cause, it is ordered, adjudged and decreed, that a rule do issue against the said, The Berliner Gramophone Company, returnable before the Judge of this Court at the Court House in Harrisonburg, Virginia, on Saturday, the 29th day of September, 1900, at 10:00 A. M., requiring the said defendant to show cause, if any it has and can show, why the injunction awarded herein on the 25th of June, 1900, should not be enlarged so as to enjoin and restrain the said defendant, its officers, agents, servants and employees, from giving away, or advertising, or offering to give away to any person, or persons, partnerships, or corporations, in the United States, except the District of Columbia, any of the goods, or articles, or any parts thereof, contracted to the plaintiff, in the contract of October 10th, 1896, other than as is provided for in said contract, and especially enjoining and restraining said defendant company, its officers, agents, servants and employees from giving away or advertising or offering to give away any such goods, or any parts thereof, so contracted to

the plaintiff, as aforesaid, to any person, or persons, partnerships or corporations, who have purchased gramophones, or gramophone goods, from, or through the plaintiff, since the 10th of October, 1896, and further to enjoin the said, The Berliner Gramophone Company, its officers, agents, servants and employees, from giving away, or advertising, or offering to give away, or from selling, trading, bartering, or in any way disposing of any of the goods or articles, or parts thereof, contracted to the plaintiff, under the contract of October 10th, 1896, to any person, persons, partnerships, or corporations, in the District of Columbia, for sale within the District of Columbia, for shipment elsewhere in the United States, to be sold or given away, except as is provided for under the contract of October 10th, 1896, and has heretofore been disposed of in the said District of Columbia, in the usual course of business of the said defendant Company, as carried on and conducted in said District of Columbia, prior to the 25th day of June, 1900.

And it is further ordered that a copy of this order shall be served upon the defendant, and upon such of its officers, agents, servants and employees, as may be desired by the plaintiff to have notice hereof.

JOHN PAUL,
District Judge.

SEPTEMBER 24, 1900.

A Copy.

Teste:

A. K. PEHLSTRE,
Clerk.

[SEAL]

EXHIBIT F.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA.

Frank Seaman, Plaintiff,

vs.

*Berliner Gramophone Co.,
Defendant.*

In Equity.

ANSWER TO RULE TO SHOW CAUSE WHY INJUNCTION AWARDED
ON JUNE 25, 1900, SHOULD NOT BE ENLARGED.

The defendant (Berliner Gramophone Company) answering said rule saith:—

1. Since the injunction in this case was granted on June 25, 1900, the Berliner Gramophone Company sold and delivered to John F. Ellis & Company, District of Columbia, sixteen gramophone machines and eight hundred and twenty six records, and gramophone goods to the amount of \$46.57, aggregating about Four hundred dollars. With the exception of these sales to John F. Ellis & Company no other sales of gramophones or gramophone goods or records have been made in the District of Columbia.

In the third paragraph of the contract of October 10, 1896, it is provided as follows:—

"The licensor hereby grants to the licensee the exclusive license to buy, sell and deal in throughout the United States of America (except in the District of Columbia) gramophones and gramophone goods embodying the said inventions and all improvements therein etc."

Defendant is advised and therefore avers that in the above quoted clause of the contract of October 10, 1896, the Berliner Gramophone Company had a right to sell in the District of Columbia the quantity of gramophones and gramophone goods and records which it did sell as aforesaid and

that there is nothing in the injunction order which prevented them from selling the aforesaid quantity of gramophones and gramophone goods.

Defendant further avers that on September 11, 1900, on the day following the argument of the motion to dissolve the preliminary injunction in this case granted, the Board of Directors of the Berliner Gramophone Company had their regular monthly meeting and adopted a resolution to the effect that all the employees of the Berliner Gramophone Company should be discharged except such as were necessary to protect the gramophones and gramophone goods stored in the company's factory.

In pursuance of said resolution all of the employees were dismissed except one clerk and a watchman and one salesman that the Company desired to send to Washington to try and induce John F. Ellis & Company to use some efforts to sell more goods in the District of Columbia for use therein than had previously been sold.

With the exception of the goods sold and delivered in the District of Columbia, as aforesaid, and four or five gramophone machines and a few records sold and delivered to individual officers and stockholders of the Berliner Gramophone Company for their own personal use no gramophones or gramophone goods which were in the said factory or delivered to them afterwards have ever been sold, given away or disposed of in any way to any person whatever.

All of the gramophones and gramophone goods owned by the Berliner Gramophone Company at the time of the issuing of the injunction in this case or received thereafter were stored in the said factory which is situate at the north west corner of Tenth and Lombard streets in the City of Philadelphia, and all said goods are there at present.

2. Defendant further says that it has not directly or indirectly given away, agreed or promised to give away or authorized any person, firm or corporation whatever to give away or promised or agreed to give away any gramophones or gramophone goods which the said Berliner Gramophone Company contracted to use and deliver to Frank Seaman.

Neither has the said Berliner Gramophone Company ad-

vertised nor authorized any person, firm or corporation whatever to advertise that it will give away gramophones or gramophone goods of any kind or description whatever.

If any person, firm or corporation is advertising to give away or to sell gramophones or gramophone goods or records to the public generally or to persons, firms or corporations to whom the said Frank Seaman has sold gramophones and gramophone goods such advertisement is without any license or authority whatever from the Berliner Gramophone Company, its Directors or officers.

Deponent further says that it has been the intention of the Berliner Gramophone Company, its Directors and officers fairly, fully and implicitly to obey the preliminary injunction issued by this Honorable Court on June 25, 1900.

3. Defendant is advised and therefore avers that the Court is without jurisdiction to enlarge the injunction heretofore granted on affidavits or matters occurring since the filing of the bill in this case.

BERLINER GRAMOPHONE COMPANY,
By

President.

Attest

Secretary.

EXHIBIT G.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA.

Frank Seaman, Complainant,

vs.

*Berliner Gramophone Company,
and the United States Gramo-
phone Company, Defendants.*

In Equity.

TO THE HONORABLE THE JUDGES OF THE CIRCUIT COURT OF THE
UNITED STATES FOR THE WESTERN DISTRICT OF VIRGINIA :

Frank Seaman, a citizen of New York, residing in the City of Yonkers in said State, brings this his bill against the Berliner Gramophone Company, a corporation organized under and by virtue of the laws of the State of Virginia, and having its principal place of business in the City of Roanoke, in the State of Virginia, and the United States Gramophone Company, a corporation organized under and by virtue of the laws of the State of West Virginia, and thereupon your orator complains and says:—

I. That the defendant, the Berliner Gramophone Company, is a corporation chartered and organized under and by virtue of the laws of the State of Virginia, and having its principal office and place for the transaction of business in the City of Roanoke, in said State.

II. That the United States Gramophone Company, is a corporation chartered and organized under and by virtue of the laws of the State of West Virginia;

III. That heretofore and on or about the 2nd day of September, 1895, the defendant, The United States Gramophone Company, having duly entered into a certain contract or agreement, under its corporate seal, and duly authorized by its board of directors, wherein and whereby it agreed with one William C. Jones, of the City of New York,

State of New York, that in consideration of the covenants and conditions therein contained it would transfer unto said Jones, or to a corporation to be formed by him, all its right, title and interest in and to certain Letters Patent of the United States of America upon certain inventions and discoveries made by one Emil Berliner and then the property of said Company.

IV. That thereafter, and on or about the 2nd of September, 1895, said Emil Berliner entered into a certain contract or agreement with said Wm. C. Jones, dated on that day, wherein and whereby he ratified said agreement aforesaid, and covenanted to co-operate in the carrying out of the same.

V. That thereafter and on or about the 4th day of October, 1895, a second and supplementary agreement was entered into by and between the United States Gramophone Company and said Wm. C. Jones more particularly describing the patents specified in said aforesaid agreement, and the terms and conditions to be performed by the party of the second part and the corporation to be formed by him.

VI. That thereafter, the defendant, the Berliner Gramophone Company, was incorporated under the laws of the State of Virginia, and said contracts and agreements were duly assigned and transferred to it, and it acquired the rights of said Jones thereunder, and entered upon the execution and performance of said contracts pursuant to the terms of the same.

VII. That thereafter, and on or about the 10th of October, 1896, your orator and the defendant, the Berliner Gramophone Company herein duly made and entered into a certain contract and agreement, dated on that day, a copy whereof, as well as of said agreements between the defendant, the United States Gramophone Company, and said Jones, are hereunto annexed marked "Exhibit A.," and made a part hereof, the original of said agreement of date October 10th, 1896, with copies of such other agreements being in the possession of your orator and ready to be produced to the Court.

VIII. That said agreement was duly sealed by the parties

thereto by their respective seals and was likewise signed in the name of said defendant by Thomas S. Parvin, its President, pursuant to a vote of its board of directors duly authorizing him so to do, and by your orator individually.

IX. That said agreement of date October 10th, 1896, provided, among other things, that the said defendant, the Berliner Gramophone Company, should manufacture solely for, and sell exclusively to, your orator, the gramophones and gramophone goods so as aforesaid controlled by it, and for the manufacture and sale whereof it held the exclusive license under the patents and contracts hereinbefore set forth, and that your orator should purchase large quantities thereof, and should sell and distribute the same, all as in and by said contract is fully and at length set forth.

X. That under and by virtue of the patents of the United States of America, as aforesaid, the defendant, and the said Berliner Gramophone Company, possessed the sole and exclusive right to manufacture, vend and use in the United States of America, as specified, the gramophones and gramophone goods aforesaid, which said right is in and by said agreement acknowledged and conceded by your orator, and it is now and for many years to come will be the sole and exclusive property of said defendant and as provided for by said agreement that of your orator and of the various heirs, executors and administrators, successors and assigns of the parties, as in and by said contract and by law is provided, the same being of great value.

XI. That upon and after the execution and delivery of said agreement your orator entered actively upon the business therein described, and agreed to be conducted, and at once engaged in carrying out the terms and provisions of the said agreement on his part specified to be performed, and purchased and paid for large amounts of goods manufactured by the said Berliner Gramophone Company, defendant, under said patents and delivered to it by your orator pursuant to the terms of said agreement.

XII. That in so doing your orator spent and caused to be spent great sums of money in advertising and introducing such goods and building up a market for the same, and pur-

chased from the said Berliner Gramophone Company, defendant goods of great value which have been fully paid for by him, as follows:—

During the year 1897	\$88,611 14
During the year 1898	238,849 58
During the year 1899	188,966 59
During the months of January, February, March, April and May, 1900	94,457 93

XIII. That your orator has in all respects well and truly and according to the letter and spirit of said contract performed the same on his part, but that the Berliner Gramophone Company, the defendant, has failed and refused, and still refuses, to perform the same on its part.

XIV. That in and during the year 1897 your orator purchased from said defendant, the Berliner Gramophone Company, two hundred forty-eight thousand six hundred and fifty-two records, wherefor he paid to said defendant, the Berliner Gramophone Company, the sum of \$41,266.76. That during the year 1896 your orator purchased seven hundred thirteen thousand seven hundred and fifty-three records, wherefor he paid to the said defendant, the Berliner Gramophone Company, the sum of \$110,633.01, and that during the year 1899 your orator purchased from said defendant five hundred sixty-nine thousand and one hundred and fifty-four records, wherefor he paid to the defendant, the sum of \$91,174.27, and that during the months of January, February, March, April and May, 1900, your orator purchased from the defendant, two hundred fifty-five thousand seven hundred eighty-four records, wherefor he paid the sum of \$40,332.87.

XV. That the defendant, the Berliner Gramophone Company, has wholly failed and refused, and still neglects and refuses, to deliver to your orator the gramophones and gramophone goods required by him in the performance of said contract.

XVI. That on the 25th day of June 1900, your orator filed his bill in this honorable court against the said de-

fendant, the Berliner Gramophone Company, wherein and whereby your orator prayed relief from this honorable court by order of injunction restraining the defendant, the Berliner Gramophone Company, from selling and delivering such goods so as aforesaid agreed to be supplied to your orator to any other person or persons, and that such action is still pending in this court.

XVII. That intending to injure and damage your orator the United States Gramophone Company and the Berliner Gramophone Company, defendants herein, have conspired and confederated together, and with sundry other persons, and for the purpose of injuring and defrauding your orator, and of refusing and of causing to be refused to him the delivery of such goods so as aforesaid required, and likewise of forfeiting the contract aforesaid between the defendant, the Berliner Gramophone Company, and your orator; and also and likewise for the purpose of forfeiting said contract so as aforesaid existing between the defendant herein, and for such purpose, and in pursuance of such conspiracy, the defendant, the Berliner Gramophone Company, has, since the date of the bringing of said action so as aforesaid heretofore begun, served or caused to be served, notice of the cancellation of said contract upon your orator, which notice of cancellation however, is entirely insufficient both in law and equity, and it is not in conformance to or in compliance with the terms of said contract. That also, and likewise, in pursuance of said conspiracy and agreement, the defendant, the United States Gramophone Company, has served or caused to be served, upon the defendant, the Berliner Gramophone Company, a notice of the cancellation of its said contract, which notice, however, is collusive and fraudulent, and intended to operate to the prejudice of your orator in his rights aforesaid, and was not properly given, nor is the same justified by the terms of said contract.

XVIII. That pursuant to said conspiracy the said defendants and Berliner Gramophone Company, herein have incorporated or caused to be incorporated a company under and by virtue of the laws of the State of New Jersey, for the purpose of consolidating the interests of said companies and

of defrauding your orator, and are about to assign and transfer to said company and to various and divers other persons, both severally and jointly, the patents, rights, and interests of the defendant herein and the Berliner Gramophone Company for the purpose of defrauding your orator through the placing of said patents rights and inventions in the hands of innocent third persons without notice who could owe no duty to your orator, and from whom your orator will be unable to secure any redress.

XIX. That other and outside of said patents as aforesaid, neither of the defendants herein has any substantial or tangible assets or property, and a judgment against either of said defendant companies, should they have transferred said patents and rights would be of no avail.

XX. That your orator has no adequate remedy at law for the redress of such wrongs, and unless he receives the protection of this court he will be wholly without remedy and redress.

XXI. That the defendants and each of them are threatening to cancel said contract with the plaintiff and cause the same to be canceled, and likewise to cancel said contract between themselves and cause the same to be canceled, to the irreparable damage and injury of your complainant and the destruction of his said business. That the profits upon the said business to your orator are and have been very large, and that the damage to your orator and to the business which he is building up under said contract, and the loss which will accrue to him by reason of said cancellation in case the same should be effected are and will be wholly irreparable and incapable of ascertainment, computation or determination, vastly in excess of two thousand dollars, to wit, being in excess of one hundred thousand dollars, and that your orator cannot be compensated in damages for such loss; and that in case said contract should be so cancelled and forfeited your orator would lose the whole value and benefit of his business, and will be in no way able to recompense himself for the loss of the same.

XXII. That your orator, pursuant to the contract aforesaid, made between him and the defendant, the Berliner

Gramophone Company, has on different occasions demanded arbitration as to all questions of dispute which have arisen between your orator and the said defendant company regarding the interpretation of said agreement of October 10th, 1896, and that said defendant, the Berliner Gramophone Company, has refused to arbitrate any such matters of difference, and is now threatening, as aforesaid, pending such efforts at arbitration, and such refusals to arbitrate to change the position of the parties hereto in conjunction with said United States Gramophone Company, its co-defendant as aforesaid, in violation of the rights of complainant and of said contract.

XXIII. That the said defendant, the United States Gramophone Company, has been notified by complainant of his rights under said contract, and has recognized and acted upon and under the same, and is fully conversant with the name of every thing therein contained.

XXIV. That under and pursuant to said contract your orator has taken and paid for from and to the defendant, the Berliner Gramophone Company, goods to the value of many hundreds of thousands of dollars, and has like wise paid to the defendant, the United States Gramophone Company, through the said Berliner Gramophone Company, vast sums of money for royalties, under and pursuant to the terms of said contract, and has thereto, and in that respect, as in all others, likewise fully performed the said contract on his part as has also the defendant, the Berliner Gramophone Company, likewise fully performed said contract with its co-defendant on its part.

Wherefore your orator stands in need of equitable relief, having no relief save in this honorable court, and prays:

First.—That your honors grant to your orator your writ of injunction, special until the hearing, and perpetual thereafter, enjoining and restraining the said Berliner Gramophone Company and the said United States Gramophone Company, the defendants herein, and each of them, and all persons and corporations claiming to act under its authority, or the authority of either of them, from canceling said contract of October 10th 1896, between the Berliner Gram-

ophone Company and your orator, or said contract of September 2nd, 1895 by and between the United States Gramophone Company, the defendant, and one W. C. Jones, and also and likewise a certain contract dated the 4th of October 1895, between the defendant, the United States Gramophone Company and one W. C. Jones, both of which last mentioned contracts have been transferred to and became the property of the defendant, the Berliner Gramophone Company, or of any or either of said contracts; and that all persons claiming to act under the authority of said defendant be likewise enjoined and restrained from canceling, causing, or allowing to be canceled such, or either or any of such contracts.

Second.—That your Honors grant unto your orator your writ of injunction enjoining and restraining the said defendant, The Berliner Gramophone Company, and the said Defendant, the United States Gramophone Company, and all persons claiming to act under the authority of them or either of them, from assigning, transferring, setting over, incumbering, or in any manner disposing of, alienating or affecting the right, title or interest of said defendants or either of them, in and to the patent rights transferred by and described in said contracts or either of them; and likewise from in any way dealing in or with said patent rights or contracts so that the same shall or may go into the hands of any other persons than the defendants, save subject to the rights of your orator under said contract.

Third.—That the defendants, and each of them, may be decreed and required to pay to your orator full compensation for all loss or damage which he has sustained by reason of the aforesaid premises.

Fourth.—That your orator may have such other and further relief in the premises as the nature of the circumstances of the case may require and which to your Honorable Court may seem equitable.

May it please your Honors, the premises considered, to grant unto your orator not only a writ of injunction issuing out of and under the seal of this Honorable Court enjoining the said defendant, as heretofore prayed, but also a writ

of subpoena to be directed to the said defendant, The Berliner Gramophone Company and the said United States Gramophone Company, therein, and thereby, commanding them at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there, full, true, direct and perfect answer make, but not upon oath and affirmation, benefit of which is expressly waived by your orator, to all and singular premises, and further to stand to, perform and abide by such other order, direction and decree therein as to this Honorable Court shall seem meet and which may be made against it in the premises and as shall be agreeable to equity and good conscience.

And your orator will ever pray.

(Signed) SIPE & HARRIS,
WALDO G. MORSE, .
Of counsel for Complainant Seaman.

UNITED STATES OF AMERICA, }
STATE OF VIRGINIA, } *to wit:*
ROCKINGHAM COUNTY, }

On this 10th day of September, one thousand nine hundred, before me personally appeared Frank Seaman, to me known and known to me to be the above plaintiff, who made solemn oath that he has read the foregoing bill of Complaint subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

(Signed) FRANK SEAMAN.

Sworn to and subscribed before me this tenth day of September, A. D. 1900.

A. W. LEWIS,
*Notary Public in and for the County of Rockingham
in said State of Virginia.*

EXHIBIT H.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT
OF WEST VIRGINIA.

Frank Seaman, Complainant

vs.

United States Gramophone Company, Defendant.

TO THE HONORABLE JUDGES OF THE SAID COURT:

Humbly complaining, your orator, Frank Seaman, a citizen of the State of New York, residing in the City of Yonkers, in said State, brings this his bill of complaint against the United States Gramophone Company, a corporation organized under and by virtue of the laws of the State of West Virginia; and thereupon, your orator complains and says:

I. That on the 25th day of June, 1900, he filed his bill of complaint in the Circuit Court of the United States for the Western District of Virginia, against the Berliner Gramophone Company, a corporation, duly organized under the laws of the State of Virginia; a copy of which bill is herewith filed and prayed to be read and taken as a part of this bill, marked "Exhibit ."

II. That thereupon, on the said 25th day of June, 1900, an injunction was awarded by the Honorable John Paul, one of the Judges of said Court, as prayed for in part in said bill; a copy whereof is herewith filed and prayed to be read and taken as part hereof, marked "Exhibit ."

III. That thereupon, the said defendant, on the 6th day of August, 1900, appeared at Rules and filed its answer to said bill; a copy whereof is herewith filed and prayed to be read and taken as a part of this bill, marked "Exhibit ."

IV. That thereupon, on the 7th day of August, 1900, the said defendant in said bill, gave notice to your complainant of a motion to be made on the 17th day of August,

1900, before the Honorable John Paul, one of the Judges of said Court, to dissolve the said injunction, and upon the hearing of said motion, the same was docketed and continued; and thereupon, further notice was given your complainant by the said Berliner Gramophone Company of another motion to dissolve said injunction, before the Honorable John Paul, one of the Judges of said Court on the 6th day of September, 1900; and thereupon, the said motion was heard, and from 6th to the 10th day of September, and the Court not then being advised of its conclusion, leave was granted counsel to file written arguments upon said motion on or before the 25th day of September, 1900; the said motion to dissolve said injunction being yet undetermined.

V. That at the September Rules, 1900, your complainant filed exceptions to the answer of the said defendant, The Berliner Gramophone Company in said suit; a copy whereof is herewith filed, and prayed to be read and taken as a part hereof, marked "Exhibit "; the hearing of which is still undetermined by the Honorable Judge of said Court, he having the same under advisement.

VI. That on the 24th day of September, 1900, upon affidavits then considered by the Court, and upon the record of said cause in said Circuit Court of the United States for the Western District of Virginia, a rule was awarded by the Honorable John Paul, one of the Judges of said Court, returnable to the 29th day of September, 1900, against the said, The Berliner Gramophone Company, to show cause why the injunction theretofore granted by him, should not be enlarged; a copy of which order is herewith filed, and prayed to be taken and read as part hereof, marked "Exhibit ."

VII. Your complainant further shows your Honor, that during the argument of said motion to dissolve said injunction on the 10th day of September, 1900, it instituted in the said Circuit Court of the United States for the Western District of Virginia, a suit in equity against the said, The Berliner Gramophone Company and the United States Gramophone Company, the defendant herein; a copy of the bill in which case is herewith filed, marked "Exhibit ."

VIII. That on the 22nd day of September, 1900, a notice was served upon Sipe & Harris, Counsel for your complainant, of a motion to be made before the Honorable John Paul, at Harrisonburg, Virginia, on the 29th day of September, 1900, to vacate and set aside the service of process made in the last named suit, on the ground, among others, that the said defendant, the United States Gramophone Company, was not engaged in business in the State of Virginia at the time of the service of the process on one I. W. Nordlinger, General Manager of the said Company, and that the said Company had no office or agent in the State of Virginia, and that such service of process upon said Nordlinger could not lawfully be made.

IX. That upon information and belief, your orator is advised, charges and believes, that the said United States Gramophone Company, and the said, The Berliner Gramophone Company, have signed an agreement under date of June 15th, 1900, for the sale to one Charles Adamson of 119 South Fourth Street, Philadelphia, Penna., of a controlling interest in the stock of the Berliner Gramophone Company, and the United States Gramophone Company, whereby the said Companies are to be practically dissolved, and a new corporation created under the name and style of the Consolidated Talking Machine Company of America, the beneficial owners of whose stock, will be the old stockholders of the Berliner Gramophone Company and the United States Gramophone Company; the object, purpose and effect of which, is to enable the Berliner Gramophone Company, by colluding with the United States Gramophone Company, to evade the injunction awarded on the 25th day of June, 1900, though nominally obeying the same; a copy of the circular issued, as your orator is advised, to the stockholders of said Company, is herewith filed, marked "Exhibit," and prayed to be read and taken as a part hereof.

X. That heretofore and on or about the 2nd day of September, 1895, the defendant, the United States Gramophone Company, having duly entered into a certain contract or agreement, under its corporate seal, and duly authorized by its board of directors, wherein and whereby it agreed with

one William C. Jones, of the City of New York, State of New York, that in consideration of the covenants and conditions therein contained it would transfer unto said Jones, or to a corporation to be formed by him, all its right, title and interest in and to certain Letters Patent of the United States of America, upon certain inventions and discoveries made by one Emil Berliner and then the property of said Company.

XI. That thereafter, and on or about the 2nd of September, 1895, said Emil Berliner entered into a certain contract or agreement with said W. C. Jones, dated on that day, wherein and whereby he ratified said agreement aforesaid, and covenanted to co-operate in the carrying out of the same.

XII. That thereafter and on or about the 4th of October, 1895, a second and supplementary agreement was entered into by and between the United States Gramophone Company and said Wm. C. Jones, more particularly describing the patents specified in said aforesaid agreement, and the terms and conditions to be performed by the party of the second part and the corporation to be formed by him.

XIII. That thereafter, the Berliner Gramophone Company, was incorporated under the laws of the State of Virginia, and said contracts and agreements were duly assigned and transferred to it, and it acquired the rights of said Jones thereunder, and entered upon the execution and performance of said contracts pursuant to the terms of the same.

XIV. That thereafter, and on or about the 10th of October, 1896, your orator, and the Berliner Gramophone Company herein, duly made and entered into a certain contract or agreement, dated on that day, a copy whereof, as well as of said agreements between the defendant, the United States Gramophone Company, and said Jones, are hereunto annexed marked "Exhibit ," and made a part hereof, the original of said agreement of date October 10th, 1896, with copies of such other agreements being in the possession of your orator and ready to be produced to the court.

XV. That said agreement was duly sealed by the parties thereto by their respective seals and was likewise signed in the

name of said defendant by Thomas S. Parvin, its President, pursuant to a vote of its board of directors duly authorizing him so to do, and by your orator individually.

XVI. That said agreement of date October 10th, 1896, provided, among other things, that the said defendant, the Berliner Gramophone Company, should manufacture solely for, and sell exclusively to, your orator, the gramophones and gramophone goods, so as aforesaid controlled by it, and for the manufacture and sale whereof, it held the exclusive license under the patents and contracts hereinbefore set forth, and that your orator should purchase large quantities thereof, and should sell and distribute the same, all as in and by said contract is fully and at length set forth.

XVII. That under and by virtue of patents of the United States of America, as aforesaid, the said Berliner Gramophone Company, possessed the sole and exclusive right to manufacture, vend and use in the United States of America, as specified, the gramophones and gramophone goods aforesaid, which said right is in and by said agreement acknowledged and conceded by your orator, and is now and for many years to come will be the sole and exclusive property of said defendant and as provided for by said agreement, that of your orator and of the various heirs, executors, administrators, successors and assigns of the parties, as in and by said contract and by law is provided, the same being of great value.

XVIII. That upon and after the execution and delivery of said agreement your orator entered actively upon the business therein described, and agreed to be conducted, and at once engaged in carrying out the terms and provisions of the said agreement on his part specified to be performed, and purchased and paid for large amounts of goods manufactured by the said Berliner Gramophone Company, under said patents and delivered by it to your orator pursuant to the terms of said agreement.

XIX. That in so doing your orator spent and caused to be spent great sums of money in advertising and introducing such goods and building up a market for the same, and purchased from the said Berliner Gramophone Company goods of great value, which have been fully paid for by him, as follows:

During the year 1897.....	\$88,641.14
During the year 1898.....	238,849.58
During the year 1899.....	188,966.59
During the months of January, February, March, April, and May, 1900.....	94,457.93

XX. That your orator has in all respects well and truly and according to the letter and spirit of said contract performed the same on his part, but that the Berliner Gramophone Company, has failed and refused, and still refuses, to perform the same on its part.

XXI. That in and during the year 1897, your orator purchased from the said Berliner Gramophone Company, two hundred and forty-eight thousand six hundred and fifty-two records, wherefor he paid the sum of \$41,266.76. That during the year 1898 your orator purchased seven hundred thirteen thousand seven hundred and fifty-three records, wherefor he paid to the Berliner Gramophone Company, the sum of \$110,633.01, and that during the year 1899 your orator purchased five hundred sixty-nine thousand one hundred fifty-four records, wherefor he paid the sum of \$91,174.37, and that during the months of January, February, March, April and May, 1900, your orator purchased two hundred fifty-five thousand seven hundred eighty-four records, wherefor he paid the sum of \$40,332.87.

XXII. That the Berliner Gramophone Company, has wholly failed and refused to perform its said contract on its part, and has neglected and refused, and still neglects and refuses to deliver to your orator the gramophones and gramophone goods required by him in the performance of said contract.

XXIII. That on the 25th day of June, 1900, your orator filed his bill in this honorable court against the Berliner Gramophone Company, wherein and whereby your orator prayed relief from this honorable court by order of injunction restraining said defendant, the Berliner Gramophone Company, from selling or delivering such goods so as aforesaid agreed to be supplied to your orator to any other person or persons, and that such action is still pending in this court.

XXIV. That intending to injure and damage your orator the United States Gramophone Company and the Berliner Gramophone Company have conspired and confederated together, and with sundry other persons, for the purpose of injuring and defrauding your orator, and of refusing and causing to be refused to him the delivery of such goods so as aforesaid required, and likewise of forfeiting the contract aforesaid between the Berliner Gramophone Company, and your orator; and also and likewise for the purpose of forfeiting said contract so as aforesaid existing between the defendant herein and that for such purpose, and in pursuance of such conspiracy, the Berliner Gramophone Company has, since the date of the bringing of said action, so as aforesaid heretofore begun, served or caused to be served, notice of the cancellation of said contract upon your orator, which notice of cancellation, however, is entirely insufficient both in law and equity, and is not in conformance to or in compliance with the terms of said contract. That also, and likewise, in pursuance of said conspiracy and agreement, the United States Gramophone Company, has served or caused to be served upon the Berliner Gramophone Company a notice of the cancellation of its said contract, which notice, however, is collusive and fraudulent, and intended to operate to the prejudice of your orator in his rights as aforesaid, and was not properly given, nor is the same justified by the terms of said contract.

XXV. That pursuant to said conspiracy the said defendant and the Berliner Gramophone Company herein have incorporated or caused to be incorporated a company under and by virtue of the laws of the State of New Jersey for the purpose of consolidating the interests of said companies, and of defrauding your orator, and are about to assign and transfer to said company, and to various and divers other persons, both severally and jointly, the patents, rights, and interests of the defendant and the Berliner Gramophone Company, for the purpose of defrauding your orator through the placing of said patents, rights, and inventions in the hands of innocent third persons without notice who could owe no duty to your orator, and from whom your orator will be unable to secure any redress.

XXVI. That other and outside of said patents so as aforesaid, neither of the companies has any substantial or tangible assets or property, and a judgment against either of said companies should they have transferred said patents and rights, would be of no avail.

XXVII. That your orator has no adequate remedy at law for the redress of such wrongs, and unless he receives the protection of this court, he will be wholly without remedy and redress.

XXVIII. That the companies and each of them are threatening to cancel said contract with the plaintiff and cause the same to be canceled, and likewise to cancel said contract between themselves and cause the same to be canceled, to the irreparable injury and damage of your complainant and the destruction of his said business. That the profits upon the said business to your orator are and have been very large, and that the damage to your orator and to the business which he is building up under said contract, and the loss which will accrue to him by reason of said cancellation in case the same should be affected are and will be wholly irreparable and incapable of ascertainment, computation or determination, vastly in excess of two thousand dollars, to wit, being in excess of one hundred thousand dollars, and that your orator cannot be compensated in damages for such loss; and that in case said contract should be so canceled and forfeited your orator will lose the whole value and benefit of his business, and will be in no way able to recompense himself for the loss of same.

XXIX. That your orator, pursuant to the contract aforesaid, made between him and the Berliner Gramophone Company, has on different occasions demanded arbitration as to all questions of dispute which have arisen between your orator and said company, regarding the interpretation of said agreement of October 10th, 1896, and that said Berliner Gramophone Company has refused to arbitrate any such matters of difference, and is now threatening, as aforesaid, pending such efforts at arbitration, and such refusals to arbitrate to charge the position of the parties hereto in conjunction with said United States Gramophone Company, as

aforesaid, in violation of the rights of complainant and of said contract.

XXX. That the said defendant, the United States Gramophone Company, has been notified by complainant of his rights under said contract, and has recognized and acted upon and under the same, and is fully conversant with the same and of every thing therein contained, having received thousands of dollars from your orator.

XXXI. That under and pursuant to said contract your orator has taken and paid for from and to the Berliner Gramophone Company goods to the value of many hundred of thousands of dollars, and has likewise paid to the defendant, the United States Gramophone Company, through the said Berliner Gramophone Company, vast sums of money for royalties, under and pursuant to the terms of said contract, and has thereto, and in that respect, as in all others, likewise fully performed the said contract on his part, as has also the Berliner Gramophone Company, likewise fully performed said contract with its said United States Gramophone Company, on its part.

XXXII. Your orator is advised, charges and believes that if the said United States Gramophone Company and the Berliner Gramophone Company are permitted, through the efforts of a majority of the stockholders of each of said Companies, under the agreement dated June 5th, 1900, a copy of which your orator has been unable to obtain, to carry into effect the consolidation of said companies, and though substantially the same parties with the same interest, to create the Consolidated Talking Machine Company, and thereby in effect accomplish a dissolution of the said Berliner Gramophone Company and the United States Gramophone Company, that your orator will suffer irreparable injury, and be wholly without remedy in case his said suit against the Berliner Gramophone Company for specific performance is decided in his favor, and after having built up a valuable business, based upon the sale of the articles which can alone be supplied by the said Berliner Gramophone Company, by and through its agreement with the United States Gramophone Company, and cannot obtain adequate compensation by way of damages at law.

Wherefore, your orator stands in need of equitable relief, having no relief save in this honorable court, and prays:

First, That your Honors grant to your orator your writ of injunction, special until the hearing, and perpetual thereafter, enjoining and restraining the said United States Gramophone Company, the defendant herein, and all persons, or corporations claiming to act under its authority, from cancelling said contract of October 10th, 1896, between the Berliner Gramophone Company and your orator, or said contract of September 2nd, 1895 by and between the United States Gramophone Company, the defendant, and one W. C. Jones, and also and likewise a certain contract dated on the 4th of October, 1895, between the defendant, the United States Gramophone Company and one W. C. Jones, both of which last mentioned contracts have been transferred to and became the property of the Berliner Gramophone Company, or of any or either of said contracts; and that all persons claiming to act under the authority of said defendant be likewise enjoined and restrained from cancelling, causing, or allowing to be cancelled such, or either or any of such contracts.

Second.—That your Honors grant unto your orator your writ of injunction enjoining and restraining the said defendant, the United States Gramophone Company, and all persons claiming to act under the authority of it, from assigning, transferring, setting over, incumbering, or in any manner disposing of, alienating or affecting the right, title or interest of said defendant, in and to the patent rights transferred by and described in said contracts or either of them; and likewise from in any way dealing in or with said patent rights or contracts, so that the same shall or may go into the hands of any other persons than said defendant, save subject to the rights of your orator under said contract.

Third.—That the said defendant may be decreed and required to pay to your orator full compensation for all loss or damage which he has sustained by reason of the aforesaid premises.

Fourth.—That the said defendant, the United States Gramophone Company, and its officers, may be enjoined and

restrained from in any wise carrying out or attempting to carry out, the agreement of the 5th of June, 1900, referred to in "Exhibit Circular," and from effecting, or attempting to effect any consolidation with the Consolidated Talking Machine Company of America, or any other corporation, and be required to produce and file with the Clerk of this Court, pending the determination of the matters in controversy in this cause, all the original of the said patents and improvements thereon, which are the subjects of the contracts aforesaid, that the same may be subject to the future orders of this court.

Fifth.—That your orator may have such other and further relief in the premises as the nature of the circumstances of the case may require and which to your Honorable Court may seem equitable.

May it please your Honors, the premises considered, to grant unto your orator not only a writ of injunction issuing out of and under the seal of this Honorable Court enjoining the said defendant as heretofore prayed, but also a writ of subpoena to be directed to the said defendant, the said United States Gramophone Company, therein, and thereby, commanding it at a certain time and under a certain penalty therein to be limited, personally to appear before this Honorable Court and then and there, full true, direct and perfect answer make, but not upon oath or affirmation, the benefit of which is expressly waived by your orator, to all and singular the premises, and further to stand to, perform and abide by such other order, direction and decree therein as to this Honorable Court shall seem meet and which may be made against it in the premises and as shall be agreeable to equity and good conscience.

And your orator will ever pray.

100

STATE OF VIRGINIA, }
ROCKINGHAM COUNTY, } to wit:

On this the _____ day of September, personally appeared before me, A. U. Lewis, a Notary Public, in and for the State and County aforesaid, John T. Harris, and made oath that he verily believes the statements contained in the foregoing bill are true.

Given under my hand this _____ day of September, 1900.

EXHIBIT CIRCULAR, WEST VIRGINIA,

CONSOLIDATED TALKING MACHINE COMPANY OF AMERICA.

PHILADELPHIA, 1 August, 1900.

DEAR SIR:—I take pleasure in notifying you that the agreement signed by you and dated 5 June, 1900, for the sale to me of stocks held by the signers in the Berliner Gramophone Company (whether represented by stock certificates or by certificates of the Voting Trust of 1899) and in the United States Gramophone Company (both preferred and common) has been signed by a very large majority of the holders of the stocks of the two companies.

The Consolidated Talking Machine Company of America—whose 5 per cent. 20 year Gold Collateral Trust Certificates and Common Stock (the latter to be represented by Voting Trust Certificates) are to be delivered in payment of the stocks of the above two companies—has been chartered and organized as provided in the agreement.

The agreement further provides that all the certificates representing the stock held by the subscribers in the above two companies shall, on notice, from me, be deposited with a Philadelphia trust company to be designated by me in exchange for deposit receipts, which in turn will be exchangeable for the 5 per cent. 20 year Gold Collateral Trust Certificates and Common Stock (the latter to be represented by Voting Trust Certificates) of the Consolidated Talking Machine Company of America, when ready for delivery.

I have designated as the depositary for the purpose of the agreement the Fidelity Insurance, Trust and Safe Deposit Company of Philadelphia.

You are therefore requested to deposit with the Fidelity Insurance, Trust and Safe Deposit Company, 325 Chestnut Street, Philadelphia, all the certificates held by you for stock in the Berliner Gramophone Company (whether stock certificates or certificates of the Voting Trust of 1899) and in the United States Gramophone Company (both preferred and common). The Fidelity Insurance, Trust & Safe Deposit Company will issue to you its deposit receipts, as provided in the agreement.

Please note particularly (1) that all certificates deposited by you should be endorsed with an assignment and power of attorney to transfer, duly signed by you and witnessed for which purpose the form printed on the backs of the certificates may be used; (2) that the assignee named in the assignment and power should be the Consolidated Talking Machine Company of America, but the name of the attorney to make the transfer should be left blank, with the implied authorization to me to fill the blank; (3) that you should affix and cancel on the assignment a United States Internal Revenue stamp for twenty-five cents; and (4) that you should also affix and cancel on the face of every certificate (in the upper right hand corner) United States Internal Revenue stamps at the rate of two-cents for every \$100 or fraction of \$100 of stock represented by the certificate.

As the parties in interest are numerous, kindly comply promptly with the above requests, for prompt compliance is important to carry out your agreement.

Very truly yours,

CHARLES ADAMSON

119 South Fourth Street, Philadelphia.

(A copy.)

EXHIBIT I.

At a Circuit Court of the United States for the District of West Virginia, continued and held at Parkesburg, in said District, on the fourth day of October, 1900, the following order was made and entered, of record, to wit:

<i>Frank Seaman, Complainant,</i>	}	IN EQUITY.
vs.		
<i>United States Gramophone Company, Defendant.</i>		

The plaintiff, Frank Seaman; having presented to the Honorable John J. Jackson, one of the Judges for the Circuit Court of the United States for the District of West Virginia, his bill of Complaint, duly verified by affidavit, together with exhibits accompanying said bill, and thereupon filed his said bill, in the Clerk's Office of the Circuit Court of the United States for the District of West Virginia, at Parkesburg, West Virginia, and process was directed to issue thereon returnable to rules; and thereupon on motion of Frank Seaman, by counsel, an injunction is awarded as prayed for in said bill restraining and enjoining the defendant, the United States Gramophone Company, and all persons, or corporations claiming to act under it, its authority from cancelling the contract of October 10, 1896, between the Berliner Gramophone Company, and the plaintiff, Frank Seaman, and enjoining and restraining the said defendant from cancelling the contract of September 2nd 1895, by and between the United States Gramophone Company, the defendant, and one W. C. Jones, and also the contract of October 4th, 1895, between the defendant and one W. C. Jones, or either of said contracts, and likewise enjoining and restraining all persons claiming to act under the authority of the said defendant cancelling, causing or allowing to be cancelled either of any of said contracts.

And it is further ordered that the United States Gramophone Company, and all persons claiming to act under the authority of it, be, hereby are, enjoined and restrained from assigning, transferring, or setting over, incumbering or in any manner disposing of, alienating or affecting the right, title and interest of said defendant, and to the patents, the right, and patent rights transferred by and deccribed in said contract, or either of them; and likewise from in any way dealing in or with said patent rights or contracts, so that the same shall or may go into the hands of any other persons other than the said defendant save subject to the rights of the plaintiff under said contract.

And it is further ordered that the United States Gramophone Company and its officers, may be enjoined and restrained from in anywise carrying out or attempting to carry out the agreement bearing date June 5th 1900, referred to in "Exhibit Circular," or from effecting or attempting to effect any consolidation with the Consolidated Talking Machine Company of America, a corporation created under the laws of New Jersey, or any other corporation; and the said defendant is hereby required to produce and file with the clerk of this court, pending the determination of the matters in controversy in this cause all the original or true copies of the said patents and improvements thereon, which are the subjects of the contracts described in the bill of complaint and the contracts exhibited therewith.

And it is further ordered that this temporary injunction shall not take effect unless and until the plaintiff, or some one for him enter into a bond, with good security, in the sum of \$500 conditioned according to law.

And it is further ordered that the defendant have leave to submit a motion to dissolve this injunction upon twenty days notice of said motion given to the plaintiff or counsel of record, of the time and place of making said motion.

A copy of this order served upon the defendant shall be suffioient notice of this order of injunction.

I, L. B. Dellicker, clerk of the Cirenit Court of the United States for the District of West Virginia, hereby

certify that the foregoing is a true copy of an order entered of record in said court on the 4th day of October, 1900, in the Equity cause of Frank Seaman *versus* The United States Gramophone Company, therein pending. The bond required by the foregoing order has been duly given and filed.

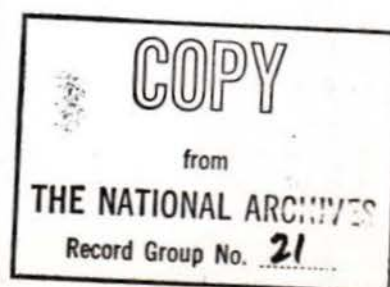
Given under my hand and seal of said Court at Parkersburg, in said District, this fourth day of October, 1900.

(Signed)

L. B. DELLICKER,
Clerk C. C. U. S., D. W. Va.

[SEAL]

(A copy.)



No. 20. October Sessions, 1900.

IN THE
Circuit Court of the United States
IN AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

Frank Seaman, Plaintiff,

vs.

Eldridge R. Johnson, Defendant.

COPIES OF AFFIDAVITS FILED.

WALDO G. MORSE,
Solicitor for Plaintiff,
No. 10 Wall Street,
New York, N. Y.

RUSSELL DUANE,
Of Counsel.

Allen, Lane & Scott, Firs., Phila.

Filed
Nov 28 1900
Samuel Bell
Clerk

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

<p><i>Frank Seaman, Plaintiff,</i></p> <p>vs.</p> <p><i>Eldridge R. Johnson, Defendant.</i></p>	}	In Equity.
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AFFIDAVIT OF WALDO G. MORSE.

Waldo G. Morse, being duly sworn deposes and says that he is an attorney and counselor at law, engaged in the practice of his profession in the City and State of New York.

That he is solicitor for the complainant in the above entitled action, has read the Bill of Complaint there in and knows the contents thereof.

That the said Bill of Complaint is to the knowledge of deponent correct and true wherein it states the business of the defendant in connection with the Berliner Gramophone Company in the manufacture of machines for it and deponent knows the same to be true wherein it states in paragraphs 1 and 2 thereof that the defendant is employed by said Company to perfect and develop machines at its expense.

That paragraph 3 of said Bill is true as appears by certified copy of the certificate of incorporation of the Consolidated Talking Machine Company in deponent's possession and which is hereby referred to and ready to be produced to the Court.

That paragraphs 4, 5, 6, 7, 8, 9 and 10 of said Bill are true to the knowledge of your deponent.

That paragraph 11 of said Bill is true as appears by duly authenticated copies of the patents in question which are in the possession of the deponent and ready to be produced to the Court.

That paragraphs 12, 13 and 14 of said bill are true to the knowledge of deponent and as appears from the aforesaid

duly authenticated copies and records and are the instruments exhibited with the Bill herein.

That paragraphs 15, 16, and 17 of said Bill are true to the best knowledge, information and belief of deponent.

That paragraphs 18, 19, 20 and 21 are true to the knowledge of deponent.

That deponent is and since the institution of said actions has been one of the solicitors for Frank Seaman, the complainant therein and in this action and in the following actions, viz.: U. S. Circuit Court Western District of Virginia, Frank Seaman *vs.* Berliner Gramophone Company; U. S. Circuit Court, Western District of Virginia, Frank Seaman *vs.* United States Gramophone Company and Berliner Gramophone Company; U. S. Circuit Court District of West Virginia, Frank Seaman *vs.* United States Gramophone Company.

That paragraphs 22, 23, 24, 25, 26, 27, 28, 29, 30 and 31 are true to the knowledge of deponent saving only that the denial of defendant's motion to vacate the injunction in the Western District of Virginia was denied and said injunction continued until the hearing of the cause and likewise the disposition made of said other motions upon the 10th day of October 1900 are alleged and stated upon the information and belief of deponent to be true; such information and belief being obtained through and founded upon letters, communications and telegrams received from Messrs. Sipe & Harris of Harrisonburg, Virginia, who are associated with deponent in said causes and whose affidavits it is impossible for deponent to produce upon this day as likewise it is impossible for the deponent to produce the certified copies in said matters.

That the allegations contained in paragraphs 32, 33, 34, 35, 36, and 37 are true as deponent is informed and verily believes.

That paragraphs 38, 39 and 40 of said Bill are true to the knowledge of deponent.

That paragraphs 41 and 42 are likewise true as deponent is informed and verily believes.

That paragraph 43 of said bill is true as appears by the

duly authenticated copy of said trade mark which is in deponent's possession and ready to be produced to the Court.

That upon said motion in West Virginia as deponent is informed and verily believes and as appears by affidavits forwarded to deponent at the time of the argument of said motion on October 10th, one Thomas W. Parvin, President of the Berliner Gramophone Company, the defendant in said action set forth that Leon F. Douglass, now in the employ of the defendant herein, was in the employ of the defendant in said action, and that if said Douglass handed said advertisement of the gramophone to N. W. Ayer & Son for insertion in different publications it was done by him on behalf of said Johnson.

That in said case and upon said motion one Albert G. Bradford made affidavit that he is a member of the firm of N. W. Ayer & Son and that said firm received the advertisements aforesaid from Eldridge R. Johnson, the defendant, and said Leon F. Douglass, likewise makes affidavit upon said motion that he is employed by Eldridge R. Johnson and handed said advertisement to Ayer & Son over the name of the Consolidated Talking Machine Company to be inserted in *Frank Leslie's Magazine* and other magazines and that the defendant Johnson likewise upon said motion made affidavit for said defendant, a copy of which affidavit is hereto annexed and marked "W. G. M. A." and made a part hereto.

That to obtain affidavits from any of said persons would be impossible for the reason that they are in business connection and collusion with the defendant herein and are engaged in promoting and carrying forward the conspiracy in the Bill in this action and that said Johnson, the defendant herein, as deponent is informed by his associates in the conduct of said case and verily believes, travelled from Philadelphia to Abington, Virginia, in the private compartment of said Thomas S. Parvin, President of said Berliner Gramophone Company, attended Court upon the argument of said motions and personally was present at and listened to said affidavits and arguments of the aforesaid motion and connected with said Bill.

That paragraph 44 of said Bill is true as deponent is informed and believes, such information having been obtained from telegrams and communications received from the City of Chicago and made to deponent by various persons in the City of Philadelphia indicating that defendant has disposed of or is about to dispose of large quantities of said gramophones and gramophone goods.

(Signed) WALDO G. MORSE.

Sworn this 22nd day of October 1900.

(Signed) SAMUEL BELL,
U. S. Commissioner E. Dist. of Pa.

W. G. M. A.

AFFIDAVIT OF ELDRIDGE R. JOHNSON.

Eldridge R. Johnson being duly sworn, deposes and says that he has read the bill filed in the above named case, and has particularly read paragraph 12 of said bill, in which it is averred that the officers and directors of the Berliner Gramophone Company paid for goods supplied to said corporation great and excessive prices in fraud of the rights of your orators and said corporation, and have personally and of their own account received from such manufacturers and particularly from one Eldridge R. Johnson, great sums of money monthly, out of and from such excessive payments so made to said Johnson and other persons in breach of their trust and duty as directors and officers of the defendant corporation, and to the great loss and damage of the same and of your orators."

Deponent says that the charge against him, above quoted is absolutely false, that he never paid to the officers and directors of Berliner Gramophone Company, or to any officer or any director of the Berliner Gramophone Company, great sums of money or any sums of money monthly or at

any other periods whatever, from payments made to deponent by the Berliner Gramophone Company.

Deponent further says that he never charged great and excessive prices for goods supplied to the Berliner Gramophone Company, but, on the contrary, the prices charged by the deponent, to the Berliner Gramophone Company for goods manufactured, sold and delivered to it, were always fair and moderate and were practically the same prices which deponent charged for the same or similar goods manufactured, sold and delivered by him to parties in Europe, who own the European rights to the Berliner Gramophone Company patents, and also own European rights to certain of deponent's patents.

Deponent further says that all prices for goods manufactured, sold and delivered to Berliner Gramophone Company were personally arranged with Mr. Seaman or Mr. LaDow.

With the exception of not more than three orders, no prices were ever arranged with the officers or directors of the Berliner Gramophone Company. All such prices were subject to the approval of Frank Seaman.

Sworn and subscribed to Sept. 27th, 1900.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
PENNSYLVANIA.

Frank Seaman, Plaintiff,

vs.

Eldridge R. Johnson, Defendant.

In Equity.

AFFIDAVIT OF CHARLES S. HALL.

STATE OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILADELPHIA, }

Charles S. Hall, being duly sworn, deposes that he resides in the City of Philadelphia and State of Pennsylvania, and that he has been long engaged in the talking machine business.

The deponent is acquainted with Eldridge R. Johnson, the defendant, who has, to the knowledge of the deponent, been for a considerable period engaged in manufacturing motors for gramophones, and gramophone goods for the Berliner Gramophone Company. For a considerable period last past, the defendant has been engaged in experimenting with records, and sound reproducing devices for use in connection with gramophones, and has had a laboratory and plant for that purpose in the City of Camden, State of New Jersey.

That upon the appearance of an advertisement in *Scribner's Magazine* for October, 1900, offering to supply gramophone records, the deponent began investigating the source from which records so advertised were to be obtained. For that purpose, he caused an application to be made for a record, in the name of another person. In reply to such letter, the deponent received a quantity of advertising matter, and an offer to send a record in exchange for an old record and 25c.

The defendant caused a second letter to be written to the same address, but received no such reply to such letter. During the week last past, the deponent sent a representa-

tive to the factory and salesroom of the said Johnson in Camden, N. J. with instructions to purchase one or more records. That said representative returned and reported to the deponent that Leon F. Douglass, the manager, was not in, and that in his absence no one had authority to sell records. The deponent sent said messenger back the next day, and was informed by said Johnson's representative that the records would not be sold at retail, at Camden, but could be purchased at No. 604 Chestnut St., in the City of Philadelphia, and which address is known by the deponent to be the headquarters of Messrs. Hawthorne & Sheble, dealers in Talking Machine goods.

That deponent has in his possession, and ready to be produced to the court, the circulars and advertisements received from said Johnson, the same being marked C. S. II. 1, C. S. II. 2, and C. S. II. 3.

That deponent thereupon went to the store of Hawthorne & Sheble and received a report that said records had not been placed in stock. Deponent thereupon went to see Mr. Sheble of said firm and was informed by him that it had not been definitely decided that he was to deal in the goods, but that they had had an offer and the arrangement was still pending and if deponent wanted some records that said firm would get them for him.

Deponent thereupon gave an order for twelve records and the next day received two records marked "Improved Gramophone Record manufactured by the Consolidated Talking Machine Company, Phila. Pa.," one of said records being marked "Lincoln's Speech at Gettysburg. Recitation by Wm. Hooley A-56," the other being marked "Bring Back my Bonnie to Me, Sung by Haydn Quartette A-123." Thereafter on the same day he saw Mr. Shaw, representative of the Consolidated Talking Machine Company at his temporary office the Hotel Vendig and was informed by him that he had brought from the factory of Eldridge R. Johnson the defendant and left with Mr. Sheble, a record which on the same day Deponent obtained from Mr. Sheble, said record bearing the same imprint as those aforesaid and being Chopin's Waltz played by Sousa's Band A-317.

That the faces of said records indicate that the matrices from which were stamped the records have been turned or planed down in the centre that being the part of the record in which the marks of the Berliner Gramophone Company have ordinarily been stamped upon records handled by deponent.

That the marks and numbers aforesaid on said records are pasted upon the face thereof printed upon paper and are not stamped in the record except in two cases where the numbers appear to have been cut into the matrix after such planing or smoothing, that upon two of such records, namely "Bring Back My Bonnie To Me" and "Lincoln's Speech at Gettysburg" the announcement that the same are Berliner Gramophone records appear in each case as part of the record which was dictated by some person at the time each of said records was made and stamped thereon and form a part of the original matrix from which said records have been produced.

Deponent is acquainted with one Shaw who is in the employ of the defendant in the conduct of his said business under the name of the Consolidated Talking Machine Company and who is in charge of the temporary office of said company in the city of Philadelphia in the Hotel Vendig and that deponent has heard the said Shaw quote prices upon five thousand (5000) records in behalf of the said Consolidated Talking Machine Company, saying that they might deliver part of them right away and it might taken them until the end of next month to deliver all of said order.

(Signed) C. S. HALL.

Sworn and subscribed before me this 22nd day of
A. D. 1900.

(Signed) SAMUEL BELL
U. S. Commissioner E. Dist. of Pa.

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UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
PENNSYLVANIA.

Frank Seaman, Plaintiff,

vs.

Eldridge R. Johnson, Defendant.

In Equity.

AFFIDAVIT OF HENRY K. SMITH.

STATE OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA, } ss.

Henry K. Smith being duly sworn deposes that he resides in the City of Philadelphia and State of Pennsylvania and has been for several years last past connected with the Berliner Gramophone Company both as bookkeeper and in a confidential capacity.

Deponent further says that in his said capacity he was familiar with the business affairs and transactions of said Company and knew from whom it bought and to whom it sold goods and portions of its various machines and devices as well as all contracts made and entered upon the books of the company.

That for many years last past Eldridge R. Johnson the defendant in the above entitled action has been engaged in the manufacturing of motors and other Gramophone goods for said Berliner Gramophone Company and has frequently been at the offices, factory and ware rooms of the said Company and has handled and examined and been consulted in regard to the complete machines and all the appliances used by the said company.

That deponent has frequently been at the office and factory of said defendant Johnson on behalf of the said Berliner Gramophone Company and by instruction of its president.

That the factory of said Johnson was for a long time at 112 North Front Street, Camden, N. J. from which place he moved about October or November last past when he removed his said factory to 120 North Front Street in Camden aforesaid.

That during the time in which said Johnson was so engaged for the Berliner Gramophone Company he manufactured for said Company and at its express request and upon an agreement made by the authority of its Board of Directors machines, apparatus and appliances for recording sound, working on the same experimentally for and on account of the Berliner Gramophone Company as aforesaid, and for all such work, records and machines said Berliner Gramophone Company paid under said agreement bills therefor being rendered regularly to said company and audited and checked up by deponent and paid for after approval by President of the Company.

That thereafter upon like authority from said Company said Johnson built other and more perfect machines, devices and appliances for recording sound for the purpose of its reproduction, the same being likewise paid for by said Berliner Gramophone Co., and that the same were adapted to reproduce sound and make what is known as gramophone records known to the trade and sold for the purpose of use upon gramophones and were removed from the factory of the defendant Johnson at the request, express instance and direction of the said Berliner Gramophone Company its directors and officers and were transferred to the factory of the said Berliner Gramophone Company of the city of Philadelphia at 424 S. 10th Street in the said city of Philadelphia at which place they remained and were used by the Berliner Gramophone Company aforesaid and whose connection with experimental and other work therewith remaining for that purpose about five months, the principal portions of the same having been then removed to the factory of said Johnson aforesaid, but portions remaining in the factory of the said Berliner Gramophone Company up to a certain period.

That said removal was, as stated to the deponent by Thomas S. Parvin, President of the Berliner Gramophone Co. because said Johnson had made improvements in said machinery and that the same was removed for the purpose of having such improvements made thereon.

That the said Berliner Gramophone Company, during the

conduct of such experimental work, paid for applications for patents, and Attorney's fees upon the same, as per bills rendered and approved by the President of said Company for and upon the work so carried forward by the defendant Johnson, and that thereafter the said Berliner Gramophone Company sold the foreign rights to such improvements receiving therefor a large sum of money and paying to the defendant Johnson a commission for making such sale.

That during the month of July, 1900, said Berliner Gramophone Company sent and employed its record maker in the laboratory of said Johnson aforesaid in the making of the records, and also placed in said laboratory other of its employees, making two hundred (200) matrices or thereabouts at such factory of said defendant Johnson, the same being produced by the employees of the said Berliner Gramophone Company as aforesaid, together with certain employees of Johnson cooperating with them. Records were pressed from these matrices and samples submitted for inspection to the Berliner Gramophone Company, the said records being thereafter catalogued by the Berliner Gramophone Company. The matrices from which such records were made were sent directly from the Johnson factory in Camden, to the Duranoid Manufacturing Company in Newark, N. J., said company being the one engaged by the said Berliner Gramophone Company to stamp its records, and bills for the same were rendered to the Berliner Gramophone Company, received by it and entered upon its books; that a large number of said records so made were ordered to be pressed and shipped to the factory of the Berliner Gramophone Company, and were in their stock of records on the 13th day of September, 1900.

That the catalogue of the Berliner Gramophone Company marked June, 1900 was prepared by the Berliner Gramophone Company aforesaid, the same being prepared, to be put out by it, and being referred to hereby and in deponent's possession ready to be produced to the Court.

That a certain advertisement which appears in *Scribner's Magazine* for October, 1900 was given to N. W. Ayers & Sons advertising agents of Philadelphia, by Leon F. Doug-

lass, while said Douglass was in the employ of the said Berliner Gramophone Company, and that said Douglass referred said Ayer & Sons to one Joseph Goldsmith, Vice President of the said Berliner Gramophone Company as to the responsibility of The Consolidated Talking Machine Company of America, in whose name the said advertisement was given; and that the said N. W. Ayer & Sons thereafter sent to the office of the Berliner Gramophone Company their yearly Advertiser's Directory, and that the said Leon F. Douglass requested the deponent to look over the same and give to the said Douglass the circulation of certain magazines, among which was the magazine called *Munsey*, this deponent then being in the employ of the said Berliner Gramophone Company as well as the said Douglass.

That deponent refers hereby as an exhibit to the catalogue of the Talking Machine Company of Chicago, U. S. A. wherein appear the cuts and advertisements of the gramophone the said cut, price lists, etc., having been furnished to one Babson, of the said Company (believed by the deponent to be the Vice President of said Company in Chicago) by said Leon F. Douglass, while said Douglass was in the employ of the said Berliner Gramophone Company, said cut having been made upon the order of said Douglass and paid for by the Berliner Gramophone Company said cuts having been so sent forward about the month of August, 1900; that such book is in the deponent's possession ready to be produced to the Court and is marked H. K. S. 3.

That while deponent was in the employ as aforesaid of the Berliner Gramophone Company, he prepared for said company at the suggestion of the said Douglass, a catalogue of records made by the said Johnson process so as aforesaid developed also containing cuts of various machines manufactured by said Johnson for the said Berliner Gramophone Company, one of the same being a cut of the regular machine made by Johnson for said Company, and the others being cuts of sample machines produced by Johnson and submitted to the said company; that deponent likewise examined the sample cover of said catalogue, which had upon it: "Manufactured exclusively by the Berliner Gramophone

Company" and upon the back whereof a cut: "His Master's Voice," and upon the first page whereof was a cut descriptive of the John Scott Medal, prepared by the deponent, and likewise containing pages advertising horns, cabinets, and other accessories, cuts of which were arranged by the deponent for the said Berliner Gramophone Company that deponent has in his possession, referred to in this affidavit, the catalogue of The Consolidated Talking Machine Company, put out by the Defendant Johnson in the sale of gramophones under such name, and that the said book contains the identical cover and back prepared by the said Leon F. Douglass as aforesaid for the said Berliner Gramophone Company as those examined by the deponent, excepting that the name Berliner Gramophone Company has been changed to Consolidated Talking Machine Company; and that said book or catalogue contains the identical picture of the said John Scott medal so prepared by the deponent and likewise the cuts procured by the deponent for the said Berliner Gramophone Company respecting said machines so as aforesaid made by the defendant Johnson, and furnished or submitted.

That in said catalogue appears several records advertised for sale, the same being the identical records in name and number produced by the said Berliner Gramophone Company for the Complainant Frank Seaman.

That likewise in said catalogue appear a large number of records which were made by the said Johnson process and so as aforesaid stamped upon the order and charged to the account of the Berliner Gramophone Company aforesaid and placed upon its books. That said catalogue is in deponents possession and ready to be produced to the Court and marked II. K. S. 4.

(Signed) HENRY K. SMITH.

Sworn and subscribed to before me this twenty-second day of October, A. D. 1900.

(Signed) SAMUEL BELL,
U. S. Commissioner E. Dist. of Pa.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
PENNSYLVANIA.

Frank Seaman, Plaintiff,

vs.

Eldridge R. Johnson, Defendant.

In Equity.

AFFIDAVIT OF FRANK SEAMAN.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.
EASTERN DISTRICT OF NEW YORK,

Frank Seaman, being duly sworn, deposes that he is the plaintiff in the above entitled action, and that he has read the bill of complaint therein, and that the same is true to his knowledge, save as to the matters therein stated to be alleged upon information and belief, and as to those matters, he believes it to be true;

Deponent further says that he has read the affidavit of Miss Frances Crouch, his secretary, hereto annexed, and knows the contents thereof: that the same is true and all the allegations therein contained are true to the knowledge of deponent, and that the correspondence set forth all took place, and is as stated therein;

That during the times set forth in the bill of complaint herein, the defendant, Eldridge R. Johnson has been engaged in manufacturing Gramophones and Gramophone goods for the Berliner Gramophone Company under the patents of said company, and was in all respects consulted and taken into conference about the manufacture of such goods by the Berliner Gramophone Company;

That controversies arose between the Berliner Gramophone Company and deponent owing to the fact that said Company, in disregard of its contract with deponent, as fully set forth in his bill of complaint against said corporation in the Western District of Virginia, and seeking to favor said Johnson, wholly declined and refused to carry out its contract with deponent,

or to do or allow to be done, anything toward the supplying of deponent with Gramophones and Gramophone goods, pursuant to said contract, unless by and through the manufacture thereof by said Johnson; and that, in conversations had by deponent with said Johnson in regard to said matters, said Johnson informed deponent that goods ordered from said Johnson, deponent would get, but that goods ordered from others, deponent would never get;

That, as appears by the bill of complaint filed in this Court at the October Session, 1900, wherein Eldridge R. Johnson, the defendant herein, is complainant and the National Gramophone Corporation is defendant, it appears that the said Berliner Gramophone Company, through Thomas S. Parvin, who is, and at all times herein mentioned, has been its President, was and up to the 20th day of September, 1900, has been jointly interested with said Johnson in the patents and discoveries relating to Gramophones and Gramophone goods and accessories made and taken out by said Johnson, but the details and particulars of which interest deponent is unable to specify, by reason of the fact that the same has been until recently concealed by said defendant and said corporation from your deponent; but that deponent is informed by one Henry K. Smith, and verily believes that in all inventions, discoveries, patents and applications, and other matters and things relating to the Gramophone and its accessories, made out or obtained by the said Johnson, the said Berliner Gramophone Company, through its said president, was and has been, interested;

And deponent alleges upon information and belief, and charges the fact to be, that such interest still continues, though colorably assigned, as in and by said bill of complaint set forth;

That, as appears by the affidavit of Thomas S. Parvin, verified in the suit brought by deponent in the Western District of Virginia, wherein an injunction has been obtained, which affidavit was presented for the purpose of obtaining an enlargement and extension of such injunction, said Parvin swears that in May last the Berliner Gramophone Company placed an

order with the defendant, Eldridge R. Johnson, for twenty-five hundred (2500) gramophone motors, which were to be delivered to the factory of the Berliner Gramophone Company in Philadelphia, and there to be fitted out with sound-boxes, horns, elbows, etc.;

That about the middle of August, and after the preliminary injunction had been granted in this case, and after about eighteen hundred (1800) of said Gramophone motors had been delivered, the Berliner Gramophone Company actually canceled the remainder of said order;

And deponent is informed and verily believes, and charges the fact to be, that the goods now in the possession of the defendant, are, to a considerable extent, the same goods which were then in his possession as an agent, servant, employee and representative of the said Berliner Gramophone Company, the defendant in said suit; and the sale or other disposition thereof by the said Berliner Gramophone Company was enjoined, as set forth in the bill in this cause;

And deponent likewise alleges that all other Gramophones and Gramophone goods which now are made, offered and threatened to be sold by the defendant, are of the same and identical kind, quality and description as though manufactured as aforesaid for said Berliner Gramophone Company, and in no wise differ therefrom, but are covered and controlled by all of the patents, patent-rights and privileges, so as in said bill set forth, granted and conferred upon said Emil Berliner, and transferred by mesne assignments and agreements, to deponent;

That, as appears by the affidavit of said Parvin, made as aforesaid, one Leon F. Douglass, an employee of the said Berliner Gramophone Company, is now the employee of the defendant herein, and as such, placed the advertisement of the Consolidated Talking Machine Company of America, as set forth in the bill of complaint and affidavits;

And that said Douglass, in the same cause, makes affidavit to like effect;

That to obtain affidavits regarding said facts for the use of deponent would be impossible, and that to request such affida-

vits would be useless, for the reasons, matters and things fully and at length set forth in the bill in this action;

That C. G. Child, and many other employees of the Berliner Gramophone Company, so as aforesaid, were immediately upon the granting of said injunction, transferred to and employed by said defendant.

Deponent further says that since the execution of the contract between the Berliner Gramophone Company and deponent, the Defendant Johnson has built Gramophones and Gramophone goods for said Berliner Gramophone Company, and has been familiar with, and fully advised concerning the contract between said Company and deponent, and has many times been called into consultation by the officers of said Company, together with deponent, in the determination of questions regarding the mechanical construction of Gramophones and Gramophone goods, and desirable types of machinery therefor, and appliances useful in connection therewith; and that upon all questions of mechanical construction the said Berliner Gramophone Company consulted with and relied upon said Johnson.

That in figuring upon the prices to be charged deponent for such goods, so to be manufactured by said Johnson, allowances were always made to said Johnson for the cost of new machinery which he, from time to time, required in developing his said business, manufacturing such goods, and meeting the changes from time to time made in the models thereof; and that the business and plant of said Johnson has been vastly enlarged and increased during the term of said contract.

That at the time of the execution of said contract the factory of said Johnson consisted of one room or two rooms in a dilapidated building, and said Johnson was engaged therein in the manufacture of stitching machines, and had just begun to make Gramophones and Gramophone goods.

That the factory of said Johnson has developed from time to time, until it now occupies large quarters, and contains a large quantity of machinery, the same being of expensive construction, and adapted to various kinds of work, a considerable part thereof being particularly adapted to the manufacture of

such Gramophone goods. That a considerable portion of the business of said Johnson is, and always has been, the manufacture of stitching machines, in which he was so, as aforesaid, originally engaged, and that such business is not affected by, or in any wise connected with the matters and things concerning the Gramophone business aforesaid.

Deponent further says that in the large amounts, aggregating over six hundred thousand dollars, which have been paid by him to the Berliner Gramophone Company, and a considerable portion whereof has been paid by the said Company to the said Johnson, the cost for the building and construction of all such special machinery has been calculated, and largely allowed and paid for to said Johnson by deponent and by said Company.

Deponent further says that in conference and conversations had by and between deponent and Thomas S. Parvin, the President of the Berliner Gramophone Company, and other officers of said Company, said Johnson has been frequently spoken of by said officers as interested in such way that he must be cared for in anything which should be done, and that, moreover, when deponent and the officers of said Berliner Gramophone Company were discussing a consolidation of Gramophone interests, the Deponent was informed by said Thomas S. Parvin, President of said Company, that the interests of said Johnson must be protected, and that said Johnson must receive one hundred thousand dollars in cash as his interest in the business of said Berliner Gramophone Company, wholly outside of any and all stock or other similar interests which said Johnson might have. That the defendant, Johnson informed deponent that he had made a great deal of money for said Parvin, and had a great influence over him, and could get him to do almost anything he wanted him to do; and that he could control the Directors of the Berliner Gramophone Company through said Parvin, and that no combination could be gotten through without the Defendant, as Defendant could come pretty near controlling the Board of Directors through Parvin. And Deponent has always understood from the Defendant, and the officers of said Corporation,

that the Defendant had and maintained some particular and confidential relation with them, and with said Company, in regard to the development of their said Patent rights and business.

And Deponent further says that during the Spring of 1900, when Deponent, pursuant to his said contract, undertook to secure goods to be made for him and for the said Berliner Gramophone Corporation, pursuant to said contract, by manufacturers other than Johnson, he was met by absolute, direct and positive refusals that any such goods should be made; and that upon various occasions prior to said time Deponent has been informed by the said Thomas S. Parvin, President of said Corporation, that he would not allow Deponent to have goods manufactured under said contract by any person other than said Johnson, so far as said Johnson was or had been in the habit of supplying the same, or of the kinds which said Johnson made and was making.

Deponent further says that said Johnson has always and frequently admitted and stated to Deponent that the Berliner Patents described in the Bill herein were and are valid and subsisting and good and effective Patents, and that the same are broad in their terms, and broadly cover the Machine known and styled as the Gramophone; and that no one could manufacture a Talking Machine of the kind then and now made by said Johnson without infringing such Patents; and that of Deponent's sole and exclusive rights under said Patents, as alleged in the Bill, herein, said Defendant has been at all such times fully advised.

Deponent further says that the name "Gramophone" was adopted by the inventor of the instrument described thereby, and patented thereunder, namely Emil Berliner; and that when Deponent was about taking up said business, and investing large amounts of money therein, he requested information from said Berliner as to his exclusive right to the use of the word "Gramophone", and that in answer to his said request he received a letter from said Berliner, dated Washington, D. C., July 15, 1897, a copy whereof is hereunto annexed, and made a part hereof, marked "F. S.—A."

And Deponent further says that he has long been familiar with the Talking Machine business in the United States, and that the patented article or machine known as the Gramophone, patented as aforesaid, has been designated by such name, and has always been known thereby; and no other machine or device has been known by the name of Gramophone, but the same has been exclusively applied to the designation of such patented machine or article; and that no other persons have used, or attempted to use, such designation or name, saving pursuant to the authority of the owners of said patents; and that in the exclusive right to such name as a trade-mark the public, and more particularly the defendant herein, has acquiesced, and the right thereto has been by him conceded.

That Exhibit F. S.—B., a pamphlet, was published and generally circulated by the said Emil Berliner, describing his said invention and discovery, and published by the said United States Gramophone Company in the year 1894, descriptive of the rights, patents, and devices aforesaid; and that with the same the Defendant is and has been familiar, the same being a reprint of a paper read at a stated meeting of the Franklin Institute on May 16, 1888, by said Berliner; and for such paper the said Berliner was awarded the John Scott Medal by said institute, the said Medal being the same illustrated by the Defendant upon the title page of his Catalogue, put out under the name of the Consolidated Talking Machine Company; and that said Berliner is the same person who, being President of the United States Gramophone Company, aforesaid, secured the registered trade-mark "His Master's Voice", set forth in the Bill and affidavits herein; the same being used as the back cover of said Catalogue.

That also and likewise the Gramophone Record, a cut whereof is exhibited on page 5 of said Catalogue and price list, is the identical Record illustrated and exhibited by the said Berliner Gramophone Company upon the front page of its so-called June Catalogue, referred to in the affidavits herein; and that many of the Records by said Catalogue offered for sale are the same productions and Records which

have been supplied by the said Berliner Gramophone Company to Deponent, and that some of the same are made from matrices produced by the talent of Deponent, and at his expense, bearing the same numbers and marks as those upon the same Records supplied to Deponent, while the numbers, marks and stamps upon a large proportion of said Records appear to have been changed, and said Records designated by numbers and stamps, and marked in a different series.

That, as appears by the affidavits made on behalf of the Berliner Gramophone Company, the Defendant in said action in the United States Circuit Court for the Western District of Virginia, as aforesaid, and which said affidavits were concurred in by an affidavit of the Defendant Johnson, and which, as appears by the affidavits in said case, were read in the presence of said Johnson, who attended the hearing in person, and, as appeared by all of the affidavits and testimony in said case, such matrices, so, as aforesaid, paid for by deponent, and produced for his use, and at his request, were, until a recent period, in the sole and exclusive possession, and under the sole and exclusive control of the said Berliner Gramophone Company; and that Deponent has never in any wise, directly or indirectly, authorized or given his consent to the use by said Company, or by said Johnson, of any of said Records, or any production or stamp therefrom, for the purpose of use by any other person save by Deponent or those who should purchase through him.

That Deponent has had placed in his possession Records bought at his request, which appear to have been stamped from Records made so, as aforesaid, by said Berliner Gramophone Company, and which are now being sold, as Deponent is informed and verily believes, by said Johnson, his agents and servants.

That Deponent has this day received a notice, dated October 24, 1900, printed upon a postal card, and purporting to be issued by the Consolidated Talking Machine Company, which is in Deponent's possession, and ready to be produced to the Court, and which is as follows: Marked "Exhibit F. S.—C."

(Front.)

Postal Card—One Cent.

UNITED STATES OF AMERICA.

This side is for the address only.

Frank Seaman,
874 B'way,
N. Y. City.

(Reverse.)

NOT ENJOINED.

Certain New York parties who formerly sold Gramophones had a restraining order issued on Monday last against Eldridge R. Johnson by the United States Circuit Court of Philadelphia.

We desire to state that Mr. Johnson appeared in Court today and that as a result we give notice that we are free to go on with the sale of our Records and Talking Machines.

Our factory has made all the genuine Gramophones sold in this and foreign countries.

CONSOLIDATED TALKING MACHINE CO.
Philadelphia, Pa.

OCTOBER 24th, 1900.

And Deponent further says that the sole and exclusive right to deal in Gramophones and Gramophone goods is of great and exceeding value to this Deponent, and that he is and has been; so far as able, diligently prosecuting such business, and so far as Deponent has been able to get goods, that he has sold and marketed the same; and that until the recent collusive and fraudulent action of Defendant, the said Berliner Gramophone Company, he has sold and marketed vast quantities of the same, and has established a reputation and a market therefor; and that in case Defendant shall be allowed to sell, advertise and market the goods so made by him, and so covered by such Patents, or to use or employ the name "Gramophone," or the name "Consolidated Talking Machine Company of America,"

or "Consolidated Talking Machine Company," this Deponent will be greatly and irreparably damaged, and his business and exclusive right, so, as in said Bill, the property of Deponent, will be destroyed. That said Johnson, the Defendant herein, never engaged in any business whatever in connection with said goods save in manufacturing said Gramophones, as aforesaid, or made any attempt to sell or market the same on his own account, until after the issuance of the injunction in said action against the Berliner Gramophone Company aforesaid.

(Signed) FRANK SEAMAN.

Subscribed and sworn to before me this 25th day of October, 1900.

(Signed) FRANK COCHRANE
Notary Public, 160, New York County.

IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR
THE EASTERN DISTRICT OF PENNSYLVANIA.

Frank Seaman, Complainant,

vs. .

Eldridge R. Johnson, Defendant.

In Equity.

AFFIDAVIT OF FRANCES CROUCH.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
CITY, COUNTY, AND STATE OF NEW YORK, } ss.

Frances Crouch, being duly sworn, deposes, that she resides in the City of New York, in the State of New York, and is private secretary of Frank Seaman, the complainant in the above entitled action ;

That as such private secretary, she had charge of the correspondence of said complainant, and is familiar with the same ;

That the letters, copies whereof are hereunto annexed, dated in the years 1899 and 1900, addressed to the complainant by the defendant, were received by complainant about the dates thereon severally specified, and are in the possession of complainant, ready to be produced to the Court ;

That the letters, addressed by the complainant to defendant, copies whereof are hereunto annexed, dated in said years, were addressed and mailed by complainant, to defendant, at the dates therein respectively set forth, and that the original duplicate copies of the same, taken by letter-press, and also by carbon duplicating process, are in the possession of plaintiff, ready to be produced to the Court ;

That during the time to which said letters relate, deponent has been private secretary as aforesaid, to complainant, and has received and opened all mail addressed to him by the Berliner Gramophone Company received at his office in the City of New York.

Deponent says that on various occasions the defendant,

Eldridge R. Johnson came to the office of complainant in the City of New York and held conversations with complainant in regard to Gramophones and Gramophone goods, which were being made by him for the Berliner Gramophone Company, or for complainant.

(Signed) FRANCES CROUCH.

Sworn to before me this 25th day of October, 1900.

(Signed) HENRY B. THOMAS,
Notary Public (17) New York County

874 BROADWAY, NEW YORK, 1/23/1900.

Berliner Gramophone Co., Philadelphia, Pa.

GENTLEMEN.—I hereby place with you an order for twenty-five hundred (2,500) Johnson Motors, complete as per sample submitted by Mr. Johnson to me last week, and which sample, or an approved duplicate thereof, will hereafter be submitted to you. Price, \$2.90 each.

I also order twenty-five hundred (2,500) sets of arm fittings per present style, same to be placed on arms complete, price ten cents each.

The condition of this order is that deliveries are to be made at the rate of seventy-five complete motors per day, provided that if I find that I cannot use this number per day it is understood that you will, upon my advice to you, restrict deliveries to my stock from time to time as I may order, provided I am keeping up to the minimum order clause of my contract with you. It is also understood that you will not deliver these machines to my stock or charge them up to me faster than the minimum order clause of my contract calls for, unless with my consent.

Delivery to begin within six weeks from date.

This order is, of course, subject to suspension in case I am restricted by injunction preventing my disposing of the goods, or any part of them herein ordered.

Relative to the placing of an order for boxes, elbows, horns,

decalcomania, etc., to make the above order complete for twenty-five hundred Gram-o-phones with necessary packing boxes therefor, I ask that you will quote me immediately best prices obtainable on these several parts, and an order will be duly placed for these parts at the best advantage.

Relative to sound-boxes for the above, I have due me twenty-five hundred boxes on the old order for five thousand sound-boxes independent of machines. I authorize you to utilize these twenty-five hundred sound-boxes for the machines specified above, with the understanding that you will so arrange with Johnson that he will make these twenty-five hundred sound-boxes good if so desired by me in the future. Standard of all sound boxes furnished to be of the highest quality in all respects as approved by me.

Very respectfully,

FRANK SEAMAN.

H.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

JAN. 26, 1900.

Frank Seaman, Esq., New York City.

DEAR SIR.—We are in receipt of your order of 23d inst. for 2500 Gramophones and thank you for same. Please note however that we do not guarantee that deliveries are to be made at the rate of 75 motors per day. We will however do our utmost to deliver this number per day if we possibly can.

Also, we will not guarantee to begin deliveries within six weeks from date, but we will do our utmost to this end, and believe we will be able to do it. All of the other conditions in the order are entirely satisfactory.

We have an option for motor boxes, arms, elbows and horns at the same price as the last order, but we will be compelled to pay one cent each more for the packing boxes. This is the only thing, however, in which there will be any advance. We

suggest that you telegraph us tomorrow if this is all satisfactory, so that we can place the orders.

Messrs. Sheip & Co., who will make the motor boxes and arms, advise us that while their price would be the same as last, it must be with the understanding that they are given decalcomanias made by the parties in Philadelphia. They have had so much trouble with the decalcomanias furnished by the other party, on account of their being too thin or in some way improperly made, that they can only use them, not only with a large proportion of loss, but with very considerable extra expense and time and labor, and the finished appearance is nothing like as good as the Philadelphia decalcomania.

This is so plainly manifest to us that we do not desire to use any more of the decalcomanias about which there has been so much complaint.

Yours truly,

BERLINER GRAMOPHONE COMPANY,

By THOS. S. PARVIN,

President.

BERLINER GRAMOPHONE COMPANY.

424 South 10th St., Philadelphia.

JANUARY 29, 1900.

Frank Seaman, Esq., 874 Broadway, New York City.

DEAR SIR.—We are in receipt of your favor of the 27th inst., and as requested, we have cancelled your order for 2500 complete machines, which you sent to us dated January 23rd.

Yours truly,

BERLINER GRAMOPHONE COMPANY,

By THOS. S. PARVIN,

President.

874 BROADWAY, NEW YORK,
1/30/1900.

Thos. S. Parvin, Prest., Berliner Gramophone Co., Philadelphia, Pa.

DEAR SIR.—On receipt of your letter acknowledging receipt of my order for twenty-five hundred Johnson motors, and declining to accept the order because you would not agree to supply me, if needed, with seventy-five machines per day, and stating furthermore that you would not guarantee to begin delivery within six weeks, I was reluctantly obliged to peremptorily cancel the order.

I have taken this action because the time has come when I will no longer be made a party to conditions which have long since existed, and which I do not propose to tolerate any longer.

Now, I considered that my request as to time was reasonable, and as to deliveries entirely within the capacity of Johnson's factory, provided his business was to be run in our interests as a first consideration, and, moreover, I did not make the request until I was satisfied upon two points, first, that it was reasonable, and second, that it was fair and just. I have no quarrel with Johnson; the way in which I have stood by him in the past may be considered as the measure of the way I would stand by him in the future, but this question has gone beyond individuals. It is the life or death of a corporation upon which I depend for profitable returns, and it is also of vital interest to your own corporation. Now, Johnson has often stated his capacity to be more than one hundred motors per day. Do you blame me for calling him to account when he declines to guarantee three-fourths of that quantity? Can you blame me for being suspicious as to his reasons for declining when he has twice evaded my direct questions as to whether he has been supplying Gramo-o-phone material to London during the period when we have been suffering so much for his goods? And do you blame me for being not only surprised but disgusted when, as in your recent letter, you resort to the veriest subterfuge in order to back Johnson up, going so far as to

read into my questions an interpretation that is little less than insulting to me?

It is true that you promised to do the best you can. Our present deplorable condition is due to my putting faith in past promises of this same nature. I am told less than ten days ago that one of Johnson's men has stated that as London paid better than New York on motors, London would get what it wanted and New York would get what was left. How does this story look alongside of the naked fact that I was not able to get a direct straight-forward answer to a simple question as to what London is really getting from Johnson, and Johnson's present declination to guarantee what he will do for New York in the future? Am I not amply justified in demanding that there shall now be an end to this trifling or boy's play or favoritism or whatever term one might apply? This order was placed originally for these twenty-five hundred motors with two points of protest against it, one that the trade was demanding something new and better in the way of a motor, and two, that the present Johnson motor could be duplicated a long way inside of the prices which he was charging but I have been upholding Johnson so long that it has become a sort of habit, and at the expense of better judgment, as well as at the expense of my own pocket, in dollars and cents, I put the order through.

Johnson has been promising a new motor for more than a year. Where is it? We have been hearing about new records. Where are they? A year ago we were going to have all sorts of desirable things to brace up our business. Where are they all? I can answer for the business and that is that it has suffered all the year and is suffering to-day, in consequence of a business policy as dastardly as it is devilish which has confined the output of the machine to a source of supplies both discreditable and disgraceful. No less than one hundred and twenty-five dollars was expended by the National Gram-o-phone Corporation in its offices here in one month in replacing main-springs; a personal inspection by one of its employees in the City of New York showed hundreds of Gram-o-phones out of commission, and no longer eating up

records, and why? Because of improper and imperfect material and for no other reason. Now I say to you with all kindness and yet with all firmness that we will do well if we begin to look after *our* profits a little more, and have a little less solicitude about the profits of the manufacturer. I have had a certain sympathy with you that Johnson deserved unusual consideration, not because, perhaps, of what he had done, as because of those things which he was just going to do. The sum total of what I have to sell to-day which has come from Mr. Johnson, is the same old-style, fragile motor and its sound-box, the former turned out, as experts solemnly assert, at anywhere from a dollar to a dollar and ten cents greater price than the same motor could be built for anywhere else; but it is true that I have been willing to make that sacrifice, the principal thing has been to get machines fast enough to supply the demand in spite of the sacrifice. Think of a great section of the country like Chicago being without a single Gramophone since the 16th day of this month. You may well be ashamed of your attempt to lay the blame of these things at my door. Remember that the present order was placed last October, and remember furthermore, that it was placed subject to a similar promise to that which you are now making, namely, to do the best you can. I had faith that this meant something and accepted the condition with the verbal promise. I have had too much punishment to get caught a second time with the same bait.

I note that in the present order you are perfectly willing to take the order with its assured profits if I will take the chances. I must decline and we must try to find someone who will undertake to turn out the needed motors, guaranteeing deliveries as to quantity and time.

Now, Mr. Parvin, I have determined to take this stand in what I conscientiously believe to be the interest of the Gramophone business, and incidently my own interests and hence yours. I have been putting up long enough upon the strength of what wonderful things were going to happen. I don't intend to characterize these things and to define them as threats on the one hand, or the ordinary every-day "jolly" on the other hand,

but I do confess to some weakness in the matter, and to not having put an end to some things before this. I am guilty of gross injustice to the Berliner Gramophone Company in waiving a single right, even though temporarily, that I had to supplying a machine for the Christmas trade, for thereby I could have made a good deal of money for all of us. These rights which I waived, temporarily, were given up in order that the business of one individual might not be interfered with, but now that individual pronounces himself as unwilling or unable to take care of my business, I am simply forced, in self-defense, to other sources of supply.

No business of any kind can succeed along the lines which we have been following in the past, and I don't want to be considered as a part and parcel of any such policy in the future.

Now I would like you to write me fully as to your own feelings in this matter, and I would like to know frankly whether you subscribe to the position I have taken, or whether you have reasons for thinking that I am wrong and that we should continue to try to do business on the present line of bolstering up Johnson and shielding him from every idea of competition and treating him as though he absolutely controlled the entire situation (which he does not by any manner of means) and can do as he pleases with us, whether we like it or not, whatever the result may be to our business.

In closing I ask you to consider what I have said as having been said in all respects in the kindest manner, and with an eye single only to our best interests, as I conceive them.

Very truly,

FRANK SEAMAN.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

FEB. 1, 1900.

Frank Seaman, Esq., New York City.

DEAR SIR.—I am in receipt of your letter of 31st ult. I desire to say first that Mr. Johnson has had nothing whatever

to do with this case. Mr. Johnson was entirely willing to guarantee to deliver to us all the parts he was required to furnish in the quantities and within the time limits of your order to us, but the Berliner Gramophone Company was not willing to guarantee to you in the same way the delivery of the complete Gramophones, first, because of possible accidents beyond their control, and second, because there is nothing in your contract that permits you to force such guarantees upon them.

As regards your other reflections against Mr. Johnson, based upon suspicions you may have or your belief in information that has been given to you by others, I will say again, as I have said to you before in a former letter, such reflections are utterly unjust and uncalled for and not in any way deserved. Of my own knowledge I know that Mr. Johnson has never permitted any work he was doing for any one else to interfere in the slightest degree with, or to the prejudice of any work he was doing for the Berliner Gramophone Company. On the contrary, he has a number of times, in his desire to hasten the delivery of motors and sound boxes he was making for us, used materials that he had purchased long before to use in filling orders for other goods he had received from other parties.

I have very fully, in previous letters, explained to you the only cause for the shipment during the past two or three weeks of a smaller number of machines than heretofore, and these statements I can substantiate by the most positive proofs, if I should be called upon to do so.

It is also a fact that when this great falling off in shipment first commenced, I think about three weeks ago, we had at that time in our factory over 700 gramophones under process of inspection, regulation, readjustment, &c., and we were compelled to request Mr. Johnson to stop further deliveries for a time, as we had not sufficient room in which to store them.

It seems almost useless to try any more to explain these conditions to you, as we have done it so frequently before and you do not seem able to appreciate it.

Yours truly,

BERLINER GRAMOPHONE COMPANY,
By THOS. PARVIN,
President.

(Telegram.)

FEBRUARY 6, 1900.

To Berliner Gramophone Co., No. 420 So. Tenth St., Philadelphia, Pa.

Taking your letter November fifteenth as positive refusal accept and manufacture Gram-o-phone as per sample submitted by me consider this formal notice under Section Four contract that I consider you have made default to fill with reasonable promptness my requirements and that your letter constitutes refusal receive or accept orders for this model at prices and conditions stated. Please consider this notification my intention to supply these goods in the manner and terms stated Section Eight Contract.

FRANK SEAMAN.

874 BROADWAY, NEW YORK, 2/6/1900.

Thos. S. Parvin, Esq., Prest. Berliner Gramophone Co., Philadelphia, Pa.

DEAR SIR.—I have long delayed taking final action upon the subject of your favor of Novem. 15th, 1899. I beg to say that the sample of machine made and given to you by me, is, as I have before stated, covered by no patents whatever, as I understand the situation, excepting the patent, a copy of which was placed in your hands, covering certain features of the mechanism. Under this patent a license is held by the Universal Talking Machine Company for use upon spring motor machine submitted to you, and as I propose to have the motor made by the Universal Talking Machine Company, this furnishes full protection to you from any possible claim of infringement in buying and selling to me these machines. While you have already been advised fully to this effect, I again state the proposition to avoid possible misunderstanding, which, I apprehend from the tone of your letter, may have existed.

While it is true, as I have reason to believe, and you have informed me, that the Universal Talking Machine Company has made certain applications for patents; as I have already explained, no patents have issued save the one specified, and consequently I am at full liberty in all respects to deliver these machines pursuant to the provisions of our contract. It is evident, moreover, that if patents shall issue to the Universal Talking Machine Company, this delivery may be continued with safety, provided we are enabled to buy from them to the best advantage in the future as we may do at the present time.

In regard to your point, made so emphatically, that the Gram-o-phone contemplated within the contract cannot be subject to patents which the Berliner Gramophone Company does not control, I call your attention to the fact that the present Gram-o-phone is manufactured under numerous patents not controlled by the Berliner Gramophone Co. but held by the manufacturer; and, furthermore, that of the thousands of machines which I have purchased from you, and also those which I have had manufactured and delivered to you by those acting for me, under the contract, every one contained a motor covered by patents other than those controlled by your company. This state of facts renders utterly ridiculous your contention that the possibility of danger set forth in your letter prevents you from taking advantage, for your profit and mine, of the manufacture of a very superior machine which the Universal Talking Machine Company will make for you or allow you to make should you be able to compete with them in price and make delivery within a reasonable time.

I take your letter as an absolute refusal to accept and manufacture under the sample which I have furnished you, and which I stood, and now stand, ready to furnish you, and your subsequent course has emphasized such refusal. Your declination is so expressed and is based upon such reasons that any further attempts to meet your views would seem fruitless, and I take it that it is needless for me to spend any more time in waiting for reconsideration by you of this expressed determination to refuse to manufacture the motor presented. You may, therefore, consider this letter a formal notice under Section

LV of our contract, that I consider you to have made default and to have failed to fill with reasonable promptness and despatch my order of November 1st, and also that your letter constitutes a refusal to receive or accept orders for this model supplied by me at any prices, under any terms or conditions, and that, therefore, it is needless for me to make any further offer in the matter or send in any further offer of orders. You will therefore please consider this a notification of my intention to supply, in the manner and on the terms stated in Section VIII of our contract, the Gram-o-phone goods necessary to fill the order so defaulted by you and such subsequent orders as I may send, which you have declined to receive or consider, as I have stated.

This privilege, which I hold under Section VIII of our contract, I propose to carry out by supplying to you by contract the spring motors of the style, form and description, submitted as I have stated, these being very superior in quality to those now supplied by you and meeting an urgent demand in the business. These Gram-o-phone goods I propose to furnish to you delivered in Philadelphia at the rate of seven dollars and twenty-five cents (\$7.25) each, complete except sound-boxes, which latter I desire to purchase from you in each case at the present rate, or to supply from those in my possession purchased from you. I will, of course, supply you only as my orders to you may require.

Should you desire me to receive these goods for your account in New York, where they are to be manufactured, a saving of some seventeen cents each will be effected, which will bring the price down accordingly.

Now, as regards the statement in your later letter, that as a matter of business policy it will be impossible for you to listen to my proposition. In the first place, I do not consider that subject in the least involved in the present question under our contract; but should it be so considered by you I beg to say that it seems to me by far the best business policy, under the conditions which confront us at present, to avail ourselves of this unexpected privilege of purchasing a far superior machine to anything which has yet been put out by us, delivery to be

made at once in order to meet the unprecedented demand on me for a superior line of goods for immediate delivery. These machines are, of course, to be supplied to you without marks or other designation except the usual "patented" marks and in such form in regard to name and description as those at present supplied to the box manufacturer.

I beg also hereby to confirm my telegram of this date notifying you of my intended action.

Yours truly,

FRANK SEAMAN.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

FEB. 19, 1900.

*O. D. Ladow, Esq., c/o Mr. Frank Seaman, 874 Broadway,
New York City.*

DEAR SIR.—The subjects to which you referred this morning by telephone are not proper subjects for telephone discussion, there is too much scope for misunderstanding; therefore I declined to discuss them by telephone.

I shall take pleasure in receiving by mail or telegraph any communication on these or any other subjects that Mr. Seaman may desire to send.

Yours truly,

BERLINER GRAMOPHONE COMPANY,
By THOS. S. PARVIN,
President.

(Telegram.)

FEBRUARY 20th, 1900.

Berliner Gramophone Company, No. 424 So. Tenth St., Philadelphia, Pa.

Will you send me order for the five hundred machines now

on order, or is that unnecessary? First lot about ready. I ask privilege making delivery here save freight charges and delay. Will pay expenses your sending agent here to receive and turn over. Answer immediately.

FRANK SEAMAN.

(Telegram.)

FEB. 20, 1900.

Frank Seaman, 874 Broadway, N. Y.

Under no circumstances will Berliner Gramophone Company place order for infringing Universal machines. See letter to-day.

BERLINER GRAMOPHONE CO.

874 BROADWAY, NEW YORK, 2/20/1900.

Thos. S. Parvin, Esq., Prest. Berliner Gramophone Co., Philadelphia, Pa.

DEAR SIR.—I have sent you by express to-day a model of a proposed motor, enclosed in a plain oak case, with nickel bed-plate and nickel finished turntable. I hereby place with you an order for twenty-five hundred (2500) of these motors, and agree to furnish them for the sum of \$2.89 each, f. o. b. New York. I will undertake, in order to enable you to convert this motor into a Gram-o-phone, to supply the various parts necessary at the following prices: Horn, as per sample sent you, forty cents each; Arm, as per sample sent you, eleven cents each; Bracket, as per sample sent you, six cents each. Time of delivery to begin thirty days from date.

Upon the acceptance of this order I will place with you the requisite order for sound-boxes, in case I need them over and above those already on order.

Please inform me at the earliest possible moment if you will undertake to make this model at a price within five per cent. of my figures, as per my contract with you.

Please acknowledge receipt.

Very respectfully,

FRANK SEAMAN.

Delivery 75 per day if required by me.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia,

FEBRUARY 20, 1900.

Frank Seaman, Esq., 87 1/2 Broadway, New York City.

DEAR SIR.—We are in receipt of your telegram of even date, and have wired you in reply as follows:—

“Under no circumstances will Berliner Gramophone Company place order for infringing Universal Machines. See letter to-day.”

I presume the five hundred (500) machines referred to in your telegram are those you claim to have ordered November 1st, 1899, and to which you referred to in your letter to us of February 6th, 1900, stating the position you proposed to take in the matter.

Events have shown us that we were entirely correct in refusing to accept your order of November 1st, 1899, not only for the reasons explained to you in our letter of November 15th, 1899, but from the fact that the United States Gramophone Company and the Berliner Gramophone Company have jointly started legal proceedings, and have served bills upon the Universal Talking Machine Company for infringement of the Berliner patents.

We beg to say to you very plainly that we, ourselves, will not order talking machines or parts thereof, from parties.

whom we are suing as infringers, neither will we give our consent to you buying or selling or using any talking machines or parts thereof, except such as you buy from us, in accordance with the terms of our contract with you.

In addition to the above, I call your attention to the fact that we have received from the United States Gramophone Company a notice, dated February 13th, referring to your demand on us to place an order for the infringing Universal Machines, and in this notice the United States Gramophone Company say:—

“We desire to say most emphatically that any such action on your part we would consider a violation of existing contracts between our respective Companies.

We are very much surprised that such a move should have been made by Mr. Seaman in view of the fact that we have all known for some time that the Universal Company is an infringing concern and that we have recently brought suit against said company for infringement.”

Yours truly,

BERLINER GRAMOPHONE COMPANY,
By THOS. S. PARVIN,
President.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

Subject: Sound Boxes.

FEB. 21, 1900.

Frank Seaman, Esq., New York City.

DEAR SIR.—We are in receipt of your letter of the 20th inst. in which you request us to deliver to you 500 sound boxes to apply on your unfilled order for sound boxes, on which I believe there are still due 2500 sound boxes.

I beg to say that when we accepted this order from you for 5000 sound boxes, it was with the very distinct understanding that you desired to use them in your efforts to sell one or two

extra sound boxes to every owner of a Gramophone, so that the owners of Gramophones could have one or more extra sound boxes to use in case of accidents to the sound box furnished with their machine, but most certainly it was never intended that they should be allowed in any way to get into the hands of manufacturers of infringing machines.

I have very positive information that large numbers of these extra sound boxes do in some way get into the hands of the Universal Talking Machine Co. and Mr. Prescott, who place them on the particular infringing machine which is labeled "Zonophone" and which is sold by the Universal Talking Machine Co. in Canada, South America, and also in the United States, and these infringing parties are allowed either with your knowledge or without it, to get our standard sound boxes and use them on the infringing machine. Under these circumstances I desire to ask you, before we ship you any more of these extra sound boxes, whether you will or will not give us satisfactory assurances that these sound boxes will be used solely for the purpose for which we originally understood they were to be used, and that they will not in future be allowed to get into the hands of infringing parties, to be used on infringing machines.

Awaiting your reply, we remain,

BERLINER GRAMOPHONE COMPANY,
By THOS. S. PARVIN,
President.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

FEBRUARY 21, 1900.

Mr. Frank Seaman, 87 1/2 Broadway, New York City.

DEAR SIR.—I am in receipt of your letter of the 20th inst., and have also received the model you refer to and note that you desire to place with us an order for 2,500 of these machines.

In reply I beg to say to you that this model is practically, if not identically, the same as the complete machine manufactured by the Universal Talking Machine Company, and sold by them in Canada and elsewhere as the Zonophone, and for the same reasons as I so plainly set forth in my letter of November 15th, 1899, and my letter to you of yesterday, I say to you again that the Berliner Gramophone Company will not accept any orders from you for these infringing Universal Machines, neither will they give their consent to your buying or selling or using any Talking Machines or parts thereof, except such as you buy from us in accordance with the terms of our contract with you.

Yours truly,

BERLINER GRAMOPHONE COMPANY,
By THOS. S. PARVIN,
President.

APRIL 3d, 1900.

Berliner Gramophone Company, No. 424 So. Tenth St., Philadelphia, Pa.

GENTLEMEN.—I understand Mr. E. R. Johnson has perfected and placed in your hands a new and superior model of a Gramophone.

There is a strong demand for machines such as I believe this one to be. How soon could you fill an order? If you will send over a sample I will examine it with a view to approving it as a model, and if it is all right will place with you at once orders for immediate delivery of machines of this type in addition to all orders placed with you to date.

Very respectfully,

FRANK SEAMAN.

P. S.—I have been expecting to receive this model some time, as I understand you have had it several weeks.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

APRIL 5, 1900.

Frank Seaman, Esq., 874 Broadway, New York.

DEAR SIR.—Yours of the 3d inst. which refers to a new model of a Gramophone, received. To this I wish to say that as yet I have not seen the model to which you refer myself, but immediately upon the receipt of your letter, I sent for Mr. Johnson in order that I might become enlightened on the subject, and he assures me that while the model is perfected, the tools for making same are not yet completed. He is working on them with all possible haste.

As soon as these tools are completed, he will make a sample lot of machines which he will exhibit either here or in Camden, and we should be very glad to have you come over to see them, and should you then desire to place orders on them, Mr. Johnson can execute any order that you would place without any delay.

Very truly yours,

BERLINER GRAMOPHONE COMPANY,
JOSEPH GOLDSMITH,
Vice-President.

4/10/1900.

Berliner Gramophone Co., No. 424 So. Tenth St., Philadelphia, Pa.

GENTLEMEN.—Answering yours of April 5th, I note your statement that you are not yet ready to place the records made by the Johnson process on the market. Please keep in mind the fact that I have made this request formally, and that I protest against your decision in this matter. The records are ready, as you tacitly admit in your communication. Large numbers of the records have been made by talent sent to you at my expense for other purposes. You will please enter my protest, and regard this as a matter for arbitration.

Very respectfully,

FRANK SEAMAN.

April 10th, 1900.

Berliner Gramophone Co., No. 424 So. Tenth St., Philadelphia, Pa.

GENTLEMEN.—Your recent bills for talent call to my attention a state of affairs which is more or less unsatisfactory. For a long time I have been aware that talent taken to Philadelphia at my expense, to which you have invariably added your 40%, etc., has been used for the development of records in Camden, N. J. I have been quite unwilling to make any complaint on this subject, because I was anxious to develop the process of Mr. Johnson in order that I might avail myself of its advantages. I am met, however with such curt refusals on your part to put the records made by that process on the market, that I feel constrained to call a halt on the present policy. You know as well as I that the process is ready, and you know also that you are keeping the records back from me for purposes other than development. Under the circumstances, therefore, I ask that you will have Mr. Child notify me, hereafter, of the talent which he proposes to employ, and the price therefor, and to obtain my approval before such talent is engaged for my account. I must believe that this is a fair and proper request for me to make, although I make it with great reluctance.

Very respectfully,

FRANK SEAMAN.

April 14th, 1900.

Berliner Gramophone Co., No. 424 So. Tenth St., Philadelphia, Pa.

GENTLEMEN.—I have yours of April 5th relative to the new model Gram-o-phone which Mr. Johnson is making. I note your admission of full knowledge of this proceeding on the part of Mr. Johnson and of your consent that he should so proceed. I call your attention to this admission on your part, and demand an immediate explanation. Please tell me how it is that Mr. Johnson is with your knowledge, proceeding to

make tools for a Gram-o-phone, a model of which has neither been seen nor approved of by me in accordance with my contract with you. This is a most irregular proceeding and one which you cannot take with my consent.

In addition to this, I am also informed that Mr. Johnson is making a number of parts for complete Gram-o-phones. I desire to know how it is that in view of some recent history Mr. Johnson is proceeding in this manner with a full knowledge and consent on your part.

Very truly yours,

FRANK SEAMAN.

BERLINER GRAMOPHONE COMPANY,
424 South Tenth Street, Philadelphia.

PHILADELPHIA, April 23, 1900.

Frank Seaman, Esq., 87 1/2 Broadway, New York.

DEAR SIR.—Inasmuch as we have not had an order from you for Gramophones since last Fall, all of which were delivered to you some time ago, and there now remains no order on our file for gramophones, and judging from your recent remarks that you are all sold up on what you had from us, we believe that the Gramophone interest is very much hampered, and as your contract provides you should promote the interest of gramophones and gramophone goods, we would ask you to place an order with us at once for gramophones, for the interest of the Gramophone Company cannot be very much benefited by the sale of records only.

Kindly advise us on receipt of this, your pleasure in the matter. We remain,

Yours truly,

BERLINER GRAMOPHONE COMPANY,
JOSEPH GOLDSMITH,
Vice-President.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia,

MAY 9, 1900.

Frank Seaman, Esq., 874 Broadway, New York City.

DEAR SIR.—We are to-day in receipt of your letter of 7th inst. and 8th inst., in which you state you have ordered thousands of Gramophones from us since October 2nd, 1899. I have had very careful search made and I cannot find that we have received any orders from you for Gramophones since your order of Oct. 2d., 1899, for 5,000 Gramophones. The last shipment on this order was made some time during March.

It is entirely true that you have sent to us since last October orders for Zonophones, with the expressed condition that we should order them either from you or from the Universal Talking Machine Co. and then deliver them to you as gramophones. These orders, as you well know, we declined to accept, giving you at the time very plainly and explicitly our reasons for such action.

I beg to correct your statement that we have declined to fill your order for sound boxes. I do not find that we have ever declined to fill this order; on the contrary, we did fill half of the order and when you requested us to ship the balance of the order we simply asked you to give us proper assurances that you would not permit these sound-boxes to be sold for use on infringing machines. This assurance you have not as yet given to us.

It is strictly within our rights to decline to supply you with parts for the repair of Gramophones unless you surrender to us or account to us satisfactorily for the loss of the parts which are intended to be replaced.

I desire to answer plainly and definitely one question in your letter of 7th inst. The question you ask is as follows:—

“If the customer heretofore alluded to supplies himself with records from other sources, will any sane man hesitate to place the blame where it properly belongs?”

To this question I reply simply—no.

Yours truly,

BERLINER GRAMOPHONE COMPANY,
By THOS. S. PARVIN,
President.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

MAY 9, 1900.

Frank Seaman, Esq., 87 1/2 Broadway, New York City.

DEAR SIR.—Your telegram addressed to our Board of Directors was received yesterday and was read to the Board during their meeting.

Your request for list of matrices, &c., will have careful consideration.

Regarding your demand to know why your late orders for records have not been filled, we beg to ask you again to explain to us why it is that your orders for a long time past have been only for records and why you have not ordered Gramophones.

Yours truly,

BERLINER GRAMOPHONE COMPANY,

By THOS. S. PARVIN,

President.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

MAY 16, 1900.

Frank Seaman, Esq., 87 1/2 Broadway, New York City.

DEAR SIR.—We are in receipt of your telegram of 15th inst. demanding information about matrices. We are also in receipt of your two letters of 15th inst. requesting definite answers from us as to whether we will or will not fill the orders for records you have sent us lately, and further orders that you say you are ready to send.

Kindly let us know why it is that your orders for a long time past have been for records only and why it is that you have not ordered any Gramophones. And also please explain how it can possibly be considered by us that you are promoting the Gramophone business in the United States.

We have for some been asking you for this information, but you have not given it.

Yours truly,

BERLINER GRAMOPHONE COMPANY,
By THOS. S. PARVIN,
President.

5/17/00.

Berliner Gramophone Company, 424 So. 10th Street, Philadelphia, Pa., Mr. Thos. S. Parvin, Prest.

DEAR SIR.—I have your letter of the 16th. I note your failure to answer in the first paragraph, the plain questions which I put to you in my letter of the 15th, to which answer I requested a plain yes or no. I respectfully decline to consider your evasion of the issue as an answer to my questions, and I respectfully request a categorical answer to the questions put in my letters of the 15th inst. forthwith.

Very respectfully,

FRANK SEAMAN.

5/18/00.

Berliner Gramophone Company, 424 South Tenth Street, Philadelphia, Pa., Mr. Thos. S. Parvin, Prest.

DEAR SIR.—I have had before me for some days your letter of May 9th, and to which further reference is made in your letter of May 16th. I have delayed an acknowledgment of the former communication because, candidly, it has seemed to me a waste of time to answer some features of that very remarkable letter.

If you, Mr. Parvin, are willing to go so far as to state, with deliberation and a knowledge of the facts, that you have had no orders from me for Grain-o-phones since October 2nd, 1899, I fear that it is futile to attempt to restore the sight of those who won't see. No one knows so well as yourself, of my

order to you on January 23rd, 1900, for twenty-five hundred motors complete.

You say that it is true that I have sent you since October, '99, orders for Zon-o-phones. The recklessness of such statements as these is pitiful. You have never received one order for one Zon-o-phone from me. You know it now, and you knew it when you made the statement.

I have ordered, if my recollection serves me aright, since October 2nd, 1899, something like six or seven thousand machines for use by me in the Gram-o-phone business. My contract gives me the exclusive option as to samples of machines. It was my judgment that I could use two styles of machines, and they were therefore submitted strictly within my rights. You say that there was an expressed condition that you should order machines from me or from the Universal Talking Machine Company. Read the closing paragraph of my order of February 20th, which is as follows:

"Please inform me, at the earliest possible moment, if you will undertake to make this model at a price within 5% of my figures, as per my contract with you."

Read the clause in my order of April 20th, as follows: "It is immaterial to me whether you make these machines, or contract with Johnson or any other person for them, or allow me to make them for you."

I can afford to go without Gram-o-phones longer than you can afford to let such statements as you have made go without apologizing, as a fair-minded and honest man.

The fact is that every order I have placed with you has been subject to the plain specific conditions of my contract; the positions which you have taken relative thereto have been arbitrary, unreasonable and unjust, and a great financial loss to me.

Now with reference to your statement that you have not declined to fill my order for sound-boxes: You say that you have simply asked me to give you proper assurances that I would not permit these sound-boxes to be sold for use on infringing machines—meaning thereby the product of the Universal Talking Machine Company. As long ago as March 9th I

said: "I have never sold a sound-box to the Universal Talking Machine Company and I do not intend to do so. I will exercise whatever caution is necessary always, and everywhere, to protect our joint interests, and you cannot ask me to do any more." You hold this statement of mine to be insufficient, and you have subsequent thereto declined to deliver me the sound-boxes, your statement to the contrary notwithstanding.

In conclusion you want to know why it is that my orders for a long time past have been for records only, and why it is that I have not ordered any Gram-o-phones; and you also ask me to explain how it can be considered by you that I am promoting the Gram-o-phone business in the United States.

Answering the first clause of the paragraph, I have shown you above that your premise is wrong and the statement is untrue.

In answer to the second clause, you are respectfully referred to those officers of your company who are responsible for the conduct of its affairs. You may ask them how I am promoting the Gram-o-phone business in the United States, in spite of the fact that a portion of my orders have been refused by them during the whole of this year, and that practically the whole of my orders have been so refused for more than thirty days last past.

Very respectfully,

FRANK SEAMAN.

(Telegram.)

MAY 19th, 1900.

Berliner Gramophone Company, 424 So. 10th St., Philadelphia, Pa.

Without waiving my rights relative to appointment of arbitrators asked January twenty-ninth this year, I hereby request arbitration on specific subject of amount of money due under my contract by either side one to the other. I appoint George H. Vail, bank president, three East Fourteenth Street, New

York, as my arbitrator, and request your nomination at once.
I also request that arbitration take place in New York City.

FRANK SEAMAN.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia.

MAY 22nd, 1900.

Frank Seaman, Esq., 874 Broadway, New York City.

DEAR SIR.—I have your telegram and letter of 19th inst.
Before I take any action with regard to your demand, I must
ask you to be more specific.

To what does your demand for arbitration refer?

Yours truly,

BERLINER GRAMOPHONE COMPANY,
By THOS. S. PARVIN,
President.

MAY 25th, 1900.

*The Berliner Gramophone Company, 424 South 10th Street,
Philadelphia, Pa., Mr. Thos. S. Parvin, Pres.*

DEAR SIR.—Replying to your favor of the 22d inst. asking
particulars of the questions which it is my desire to arbitrate, I
beg to say:—

Having previously requested arbitration to be met only with
objection I endeavored to conform to your opinions recently
expressed as previously I had endeavored to follow our former
understanding in relation to the selection of arbitrators.

By the present submission, I do, not in any sense wish to
withdraw or limit the former tender of arbitration, but ex-
pressly to leave the same open to your acceptance.

It is apparent that a dispute has arisen between us regarding
the interpretation of our agreement of October 10th, 1896.
Such being the case I desire an arbitration as provided by
clause 27th thereof.

I hereby appoint Mr. George F. Vail, of the City of New York, President of the 14th Street Bank, a disinterested arbitrator, and notify you of the appointment and give notice to you to appoint an arbitrator. I have appointed my own arbitrator and desire that you appoint yours. Please notify me of the selection as soon as made.

The questions in dispute and which are to be submitted to arbitration as above are :—

First.—Whether the various payments made by me under protest were properly protested and whether such payments were properly required by you under the contract?

Second.—Whether the amount of the aforesaid payments should be credited back to my account by you?

Third.—Whether I should be compelled to pay for talent employed by you in producing matrices for records until you furnish me samples of records made from such matrices or assure me you will do so, and will fill orders for records from the same?

Fourth.—Whether I am entitled to a statement of the matrices made for me and of the records pressed from each?

Fifth.—Whether you are under obligation to fill orders for records which I have sent to you and which you have declined to honor?

Sixth.—Whether you are entitled to charge to my account 40% in addition to the amount paid by you for talent in making records wherein you have rendered to me the bills for talent employed?

Seventh.—Whether you are entitled to use the laboratory maintained at my expense in making any matrices or records other than those ordered by me?

Eighth.—Whether you are entitled to use matrices produced from talent ordered by me and charged to my account, except as and when I order records to be made therefrom?

Awaiting your early acknowledgment and action, I am,

Truly yours,

FRANK SEAMAN.

5/26/00.

Berliner Gramophone Company, Philadelphia, Pa., Mr. Thos. S. Parvin, Prest.

DEAR SIR.—I hereby confirm my telegram to you of yesterday, May 25th, as follows:—

"Hear from Newark that quantities of records are being stamped out by Duranoid. Telegraph immediately if this is true and if matrices used are those made for and paid for by me. If true I protest such action and demand an immediate and full explanation."

I desire and demand an immediate answer to the question put to you therein. You will please take notice of the protest against your action, if the information referred to in the telegram is correct.

Very respectfully,

FRANK SEAMAN.

MAY 26th, 1900.

The Berliner Gramophone Company, 424 South 10th Street, Philadelphia, Pa., Mr. Thos. S. Parvin, Prest.

DEAR SIR.—I have yours of May 22d. I note that you revise your former statement and admit having received an order from me, dated January 23d, 1900, for 2500 Gramophones, and that you also refer to the cancellation of that order on January 27th, but how disingenuous it is to omit referring to the history between the receipt of my order and its cancellation.

You have not forgotten the complaints I was forced to make about the daily delivery of machines, and which complaints forced me to make my order conditional upon the daily production of machines to cover my orders therefor. You refused the order because I made that condition, and you know it. You forced its cancellation because you would not agree to make the specified delivery. You did that upon your own responsibility because Johnson has told me since that he could easily have delivered the number of machines daily which the

order called for. If circumstances, as distorted by you, justify you in charging me with subterfuge and a want of good faith in connection with this order, then the real circumstances justify me in charging you with refusing to deliver me 75 machines a day for the reason that my success in disposing of that quantity of goods and reaping the profits therefrom, was not in harmony with your own ideas of the conditions which you would prefer to have prevail.

Having shown to you in past correspondence that your premise is absurdly wrong, in that I have not ordered Gram-o-phones, when you have on your files orders for thousands of Gram-o-phones, the last clause in the last paragraph of your letter is utterly unjust and I protest against it. I deny that I have refused to give you information that you have had a right to ask, and I assert that you are at this moment refusing to give me information which I have a right to ask. I deny that I have not ordered Gram-o-phones in connection with records, but I assert that that has absolutely nothing to do with this situation. My contract with you gives me the right to order such Gram-o-phones and Gram-o-phone goods as my trade demands. I shall neither permit you to interfere with my right nor allow you to abrogate it either by false reasoning, by injustice, by your continued threats or other means.

The idea that you cannot tell me why you do not fill my order for records until you have asked and had answered a question which has not the slightest bearing upon the subject of the sale of records, is quite absurd, as any fair-minded person will admit.

Very respectfully,

FRANK SEAMAN.

BERLINER GRAMOPHONE COMPANY,
424 South 10th St., Philadelphia,

JUNE 2d, 1900.

Frank Seaman, Esq., 874 Broadway, New York City, N. Y.

DEAR SIR.—We are in receipt of your letter of the 26th

inst., in reply to ours of 22d inst., relating to your so-called order dated January 23, 1900, and making various other statements and assertions, which upon their face are so manifestly incorrect that it seems to me there can be only two conclusions possible to be made from them.

One is that you are ignorant of the actual facts in the matter and the other is that you have purposely misstated or distorted them. I do not wish to accuse you of the latter, and will therefore reply to your letter with the idea that the former is the correct conclusion.

You refer in the first clause of your letter to our having omitted reference to the "history" between the receipt and cancellation of your so-called order dated January 23, 1900. There is absolutely no "history" in this case within the time limit you name, other than that distinctly and plainly set forth in my letter to you of Jan. 26th, 1900, in which I acknowledged receipt of the order and stated that while we did not guarantee that deliveries should be made at the rate of seventy-five motors per day or that deliveries should begin within six weeks of that date, I stated that we would do our utmost to deliver this number per day if we possibly could, and that we would do our utmost, and believed we would be able to begin deliveries with six weeks from the date named.

There was not even the slightest thought in my mind at the time we received the order but that you were acting entirely in good faith in sending it to us and that we were acting entirely in good faith in accepting it, as we did, and this is further proved by the fact that on the same day, Jan. 26th, I gave Mr. Johnson the order for 2,500 motors, exactly the same way you had given it to us, including the conditions that deliveries were to be made at the rate of 75 per day, and that deliveries were to commence within six weeks from date. Mr. Johnson agreed to this and gave me his guarantee that deliveries would be made as stated. I did not feel called on at all to guarantee these same conditions to you for the reason that while Mr. Johnson might make the deliveries as promised, conditions over which we might have no control might prevent us from testing, inspecting, and packing the required number, or some

accident might prevent our securing in time the necessary horns, elbows, packing boxes, &c., &c., which we would have to secure in order to make up the complete machines.

Another reason was that you had no right to force such conditions upon us. This was fully explained to you in a later letter.

I have not forgotten the complaints you made about the daily delivery of machines, neither have I forgotten that in almost every case where you made these complaints I replied to them fully and plainly and in almost every case pointed out plainly to you wherein your complaints were not at all justified by the existing facts.

I have told you over and over again in my correspondence that we welcomed specific complaints and intelligent criticisms, as these would enable us to discover and correct faults, if any existed, but general complaints such as you were in the habit of making, were entirely wrong.

My correspondence with you shows that investigation of a great majority of your complaints proved conclusively that they were utterly uncalled for and unjust.

I did not for a moment believe that you would cancel the order because I objected to the specific conditions about deliveries. In almost every one of your orders sent previously you had in them practically these same conditions and I made the same objections and you agreed to them in every case and withdrew the conditions. My letter to you of January 26th shows for itself that we would do everything in our power to give you the complete machines within the time and at any rate of delivery per day specified by you, and your telegram and letter of cancellation sent next day, January 27th, were a complete surprise to me.

You state that we have on our files orders for thousands of gramophones. This is not true. The so-called orders you refer to, although you do not specify them, I presume are the orders you have sent to us for "Zonophones." These so-called orders were not orders within the letter or spirit of the contract you made with us. And furthermore, even if outside the contract we had desired to accept your so-called orders, they

had such conditions attached to them that they could not possibly be accepted by us. Our reasons for not accepting them have been given to you over and over again. We are entirely willing to stand by these reasons and we take the entire responsibility of our action in so doing.

Since your so-called orders were refused by us you have by your letters and your actions more and more openly and plainly convicted yourself of your bad faith towards us.

Your contract with us was most liberal to you and has permitted you to make a great deal of money, and had you lived up to the spirit and letter of it or even only to the letter of it, you and we and all concerned would have been vastly better off than now when it is so plainly shown that for a long time past you have not been promoting the Gramophone business as your contract called for, but you have been promoting a business antagonistic to the legitimate Gramophone interests and at the same time trying to evade your responsibility to us by your endeavors to hide behind the Universal Talking Machine Co. and National Gramophone Cor. over whose actions you have frequently stated you had no control.

If it should be considered necessary for us to prove positively that some of these statements of yours are not true we have ample evidence to do it.

You have at various times asked us to grant you various concessions or to make changes in your contract and your reasons for such requests after careful investigation on our part have usually proved to be unbusinesslike or untrue, or to have hidden behind them the establishing of a precedent which would be injurious to our interests and such requests were naturally refused and almost invariably after such refusals you have accused us of being narrow minded and not at all liberal. In fact your principal complaints against us have been because we were not foolish enough to grant your many ridiculous requests. Our course towards you has been more than liberal, it has been unusually generous, and considering all the provocations you have given us it might be called foolishly so. Some of your offences have been excused on your promises to offend no more, some have been entirely overlooked. All might have

been forgiven had you changed your methods and shown to us conclusively your intention to act in good faith towards us, but this you never did, although every opportunity was given you.

In conclusion I most positively assert that since the contract with you was entered into there has not been one single instance of a breach on our part of either the letter or the spirit of it.

You have asked us certain questions a number of times and you have demanded that we answer them. I have just about as frequently asked you certain other questions, telling you at the time that I could not intelligently answer your questions until after you had first answered mine.

It is hardly necessary to go into this matter any further.

Good bye,

BERLINER GRAMOPHONE COMPANY,

By THOS. S. PARVIN,

President.

CIRCUIT COURT OF THE UNITED STATES, EASTERN DISTRICT OF
PENNSYLVANIA.

Frank Seaman, Plaintiff,

vs.

Eldridge R. Johnson, Defendant.

In Equity.

AFFIDAVIT OF JOHN O. PRESCOTT.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.
EASTERN DISTRICT OF NEW YORK, }

John O. Prescott, being duly sworn, deposes that he is engaged in the export trade in the City of New York, and has, for upwards of a year last past, handled, sold and delivered, sound-reproducing machines and devices, being an employee of F. M. Prescott therein;

That on or about the twenty-sixth day of October, 1900, deponent received for said firm through the mail, a card announcing that at Room 244 on October 26th and 27th, 1900, at the Astor House in the City of New York, improved gramophones would be offered for inspection by Courtland Shaw, manager, of the Traveling department of the Consolidated Talking Machine Company, of Philadelphia, such card being submitted herewith and marked "J. O. P. 'A'";

That, pursuant to such invitation, deponent called at the Astor House aforesaid, in the City of New York and had an interview with said Shaw, who showed to deponent records bearing a label in black with gilt letters, as follows: "Improved Gramophone Record, manufactured by the Consolidated Talking Machine Company, Phila. Pa." the same being of various numbers and titles, according as the several records represented different productions, and that the said records were used upon machines similar to the ten dollar (\$10.00) machine illustrated upon said card, and also similar to the machines exhibited in the catalogue and price-list of the Consolidated Talking Machine Company, of which catalogue and price list said Shaw had many copies;

That such records were played by said Shaw upon such machines, and deponent was invited to place orders for the purchase of machines and records as advertised in said catalogue, and on said card;

That thereupon deponent inquired the connection of said Shaw with the Consolidated Talking Machine Company, and was informed that it was official and that any representations or sales negotiated by said Shaw, would be honored and substantiated;

That in the course of such interview, said Shaw produced and showed to deponent a postal card bearing the heading "Not enjoined," signed by the Consolidated Talking Machine Company, of Philadelphia, and dated October 24, 1900, being the same imprint as the one marked herein F. S. 'C'"—being the same as the card herein exhibited marked "J. O. P. 'B'"—and at the same time delivered to deponent a printed notice in imitation of typewriting, or a carbon copy made by such process upon the paper of the Consolidated Talking Machine Company, which said notice further elaborates the contents of such postal card, and is hereunto annexed, marked "J. O. P. 'C'";

And that during such interview, said Shaw offered to take the order of deponent for five thousand (5,000) of such records, which were being rapidly manufactured, as stated by said Shaw, who also offered to sell to deponent or his said firm, any of the machines illustrated in such catalogue, in such quantities as might be required, delivery to be made as rapidly as manufacture could be carried on;

And that thereafter, deponent's said firm received in the mail the envelope and circular of dealers' discounts on gramophones, records and supplies put out by such Consolidated Talking Machine Company and herewith exhibited, marked "J. O. P. 'D'" and "J. O. P. 'E'" respectively.

(Signed) J. O. PRESCOTT.

Sworn to before me this 29th day of October, 1900.

[SEAL]

(Signed) HENRY B. THOMAS,
Notary Public (17) New York County.

U. S. CIRCUIT COURT, EASTERN DISTRICT OF PENNA.

Frank Seaman

vs.

Eldridge R. Johnson.

In Equity.

AFFIDAVIT OF ORVILLE D. LADOW.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.
CITY OF NEW YORK, }

Orville D. LaDow, being duly sworn deposes and says that he is the Secretary of the National Gram-o-phone Corporation doing business at No. 874 Broadway, New York City; that he received at the aforesaid address, by mail on the morning of Thursday, October 25th, A. D. 1900, a postal card bearing the caption "Not Enjoined," said postal card being signed by the Consolidated Talking Machine Co., Philadelphia, Penna., and having been mailed in said city of Philadelphia, October 24th, A. D. 1900, that he has compared the said postal card, with a postal card referred to in the affidavit of Frank Seaman and finds the two cards to be identical; that the deponent caused inquiries to be made among the local talking machine trade relative to the receipt of similar postal cards, and that while he, the deponent, has no actual knowledge of the number of such cards so received yet there was a general admission that such card had been received, and in one case in particular there was complaint made that such cards had been received by his customers and that they were demoralizing and disrupting the business of the dealer in question.

(Signed) ORVILLE D. LADOW.

Sworn and subscribed to before me this 25th day of October,
A. D. 1900.

[SEAL]

(Signed) FRANK COCHRANE,
Notary Public 160, New York County.

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IN THE CIRCUIT COURT OF THE UNITED STATES IN AND FOR THE
EASTERN DISTRICT OF PENNSYLVANIA.

Frank Seaman, Plaintiff,
vs.
Eldridge R. Johnson, Defendant. } In Equity.

AFFIDAVIT OF CHARLES S. HALL.

COMMONWEALTH OF PENNSYLVANIA, }
CITY & COUNTY OF PHILADELPHIA, } ss.

Charles S. Hall, having been duly sworn according to law,
deposes and says:—

I am engaged in the business of selling talking machines
and general supplies at No. 13 North Ninth street, Phila-
delphia.

On the morning of October 25th, 1900, Horace Sheble, Sec-
retary and Treasurer of the Hawthorne & Sheble Manufac-
turing Company, gave me the postal card annexed hereto stating
that it had been received by his Company on October 25th,
1900, as endorsed thereon.

(Signed) C. S. HALL.

Sworn to and subscribed before me this 25th day of Octo-
ber A. D. 1900.

(Signed)

[SEAL]

Notary Public.

UNITED STATES CIRCUIT COURT EASTERN DISTRICT OF
PENNSYLVANIA.

Frank Seaman, complainant,

against

Eldridge R. Johnson, defendant.

In Equity.

AFFIDAVIT OF WALDO G. MORSE.

EASTERN DISTRICT OF NEW YORK, }
STATE OF NEW YORK, } ss.
CITY AND COUNTY OF NEW YORK, }

Waldo G. Morse, being duly sworn, deposes: That he is solicitor for the Complainant in the above entitled cause.

That deponent has examined the files of this Court, and finds the following bills in Equity thereupon:

Berliner Gramophone Company against *Johnson*, In Equity, to restrain the defendant from using the name "Gramophone" in marketing the Talking Machines manufactured by him.

Consolidated Talking Machine Company of America against *Johnson*, In Equity, to restrain the defendant from using the name "Consolidated Talking Machine Company."

Johnson against *The National Gramophone Corporation*, In Equity, an action to restrain the defendant from using certain patented appliances, the property of said Johnson, a half interest wherein was, through mesne assignments, transferred to Thomas S. Parvin, and then re-transferred to said Johnson.

That the Johnson who is a party to such suits is the defendant in this cause, and deponent begs leave to refer to the record in said causes for the full purport of such Bills.

American Gramophone Company against *The Berliner Gramophone Company*, In Equity, an action to restrain the Defendant from infringing upon certain Patents of Complainant.

That deponent has likewise examined the Docket of the United States Circuit Court for the Eastern District of New York, and finds the following causes there pending.

Eldridge R. Johnson (the defendant in this action) against *The Universal Talking Machine Company*, In Equity, such action being brought to restrain the use of machinery and appliances alleged to infringe the same Patents set forth in the Pennsylvania action by the same Complainant against *The National Gramophone Corporation*.

Berliner Gramophone Company and United States Gramophone Company against *The National Gramophone Company*, In Equity, to restrain *The National Gramophone Corporation*, the defendant, from using in its corporate title the word or name "Gramophone," the same being claimed as a copyright trade name, the property of Complainant; a copy of the Bill in said suit being herewith exhibited, marked "W. G. M., 1," to which deponent begs leave to refer as part hereof.

In the same Circuit, *American Graphophone Company* against *The National Gramophone Company and Frank Seaman*, In Equity, to restrain the use of machinery or appliances infringing the Patents of the Complainant; being the same Patents set forth in the suit of *The American Gramophone Company*, such Complainant, against *The Berliner Gramophone Company*, in the Eastern District of Pennsylvania, and above specifically referred to.

That after diligent search of the records of the Courts, deponent verily believes, and deposes, that no other suits in equity are pending, affecting the matters, things, rights, or parties to or in this action involved, other than as aforesaid; and that no actions at law are pending by or between the same, or any of them, save an action at law for damages brought by the *Berliner Gramophone Company* against *Frank Seaman* in the United States Circuit Court of the Eastern District of New York, the Plaintiff wherein sets up the matters and things alleged by way of defense in the action brought by Complainant herein against said *Berliner Gramophone Company* in the Western District of Virginia, and set forth in the Bill in this suit; and that the process therein was served on defendant on or about the twenty-third day of October, 1900.

That no other controversy exists, so far as deponent is informed, and deponent believes that no controversy has ex-

isted, in regard to the exclusive right of Emil Berliner and his assigns to the use of the word "Gramophone" in connection with Talking Machines, and otherwise, save as in and by said suits disclosed; and that no controversy is disclosed in said suits, or any of them, saving only in the action to restrain the National Gramophone Corporation from using the word "Gramophone."

That deponent acted as Counsel upon the incorporation of The National Gramophone Company, and has acted as Counsel for The National Gramophone Corporation, which succeeded to the business of the same, continuously up to the present time, and has been familiar with the Gramophone business for upwards of four years last past, in connection with this said employment.

That deponent has conferred with the officers and directors of The National Gramophone Corporation and The Berliner Gramophone Company, and on one occasion met the defendant Johnson, prior to the commencement of this action; and that during all of such time the word "Gramophone" has been claimed and recognized as the trade name, and exclusive property and trade-mark of said Emil Berliner and his assigns, and that the use of the same by The National Gramophone Company and The National Gramophone Corporation, its successors, has been under and pursuant to the authorization, consent and license of the persons so exclusively entitled to such use; and that said Corporation has dealt very largely in Gramophones and Gramophone goods, and has distributed the same throughout the United States, and sold vast quantities thereof, and still has on hand goods, wares and merchandise manufactured under the Patents of said Berliner, and carrying the right to use the name "Gramophone," which said goods it is engaged in marketing, as it has opportunity.

That no occasion has arisen or attempt been made to enforce the said Berliner Patents, by suit or otherwise, until a very recent period, the public having generally acquiesced in the exclusive right of said Berliner and his assigns to the use of said Patented devices and name.

That heretofore, and in or about the month of September,

1900, in the Circuit Court of the United States for the Western District of Virginia, Samuel Ford and William C. Smith brought their Bill in Equity against the Berliner Gramophone Company, and process thereunder was duly issued upon said Bill, duly verified, and affidavits in support thereof, and certain exhibits annexed thereto, being the Bill, affidavits and Exhibits marked "W. G. M., 2," to which deponent begs leave to refer as a part hereof, certified copies of such affidavits being presented herewith, together with similar affidavits in the other actions hereinbefore and in the Bill herein referred to; and that in such suit an injunction was awarded against the defendant, the Berliner Gramophone Company, and the same was sustained, as per an order proposed to be entered, more fully and at length appears; all such papers being hereby referred to, and presented to the Court, and marked "W. G. M., 3," the same having been furnished to deponent by counsel for said complainants.

That, as appears by the affidavits in all of said actions, certified copies and copies whereof are hereunto annexed and referred to as aforesaid, being marked "W. G. M., 5" the defendant herein, Eldridge R. Johnson, manufactured solely for the complainant and for the said Berliner Gramophone Company, up to and including the time when Notice of Injunction in the suit of Complainant against said Berliner Gramophone Company was served upon him, and that at the time of the service of such Notice the Defendant was engaged in the manufacture of twenty-five hundred of such machines, eighteen hundred whereof had been delivered to said defendant. The proceedings in such actions and the consolidation set forth are likewise disclosed.

That Notice of the aforesaid Motion to enlarge said injunction issued against the Berliner Gramophone Company, aforesaid, and likewise of the rule for the name, was duly given by service of certified copies thereof upon the defendant herein, as well as all other persons connected with such business whom it was possible to find.

That deponent exhibits herewith, and begs to refer to for full information, copies of the Certificate of Incorporation of

The Consolidated Talking Machine Company of America, and of the Charter of the Johnson Sound Recording Company, marked respectively "W. G. M., 6" and "W. G. M., 7."

That deponent is familiar with the manufacture, style, and construction of the gramophone, as the same has been manufactured by said Johnson, the defendant, and by said Berliner Gramophone Company, marketed by Complainant, and the machines offered for sale in the Catalogue of the defendant are in many instances identical with those which had previously been manufactured by said Defendant for the Complainant and for said Berliner Gramophone Company, and in all cases substantially the same.

(Signed) WALDO G. MORSE.

Sworn this twenty-ninth day of October, 1900, before me.

(Signed) HENRY B. THOMAS,

[SEAL]

Notary Public (17), New York County

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN
DISTRICT OF PENNSYLVANIA.

<i>Frank Seaman, Plaintiff,</i>	}	In Equity.
against		
<i>Eldridge R. Johnson, Defendant.</i>		

AFFIDAVIT OF EDWARD D. EASTON.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.

Edward D. Easton, being first duly sworn, deposes and says, that he is the president and general manager of the American Graphophone Company and of its sole selling agents, the Columbia Phonograph Companies.

Deponent further says that he has been interested in the talking machine business, both financially and otherwise, ever since its inception, and for the last twelve years or more he has given his time and attention exclusively to that business. That he has made it a point to keep informed on all matters relating to the past history, the course of development and the present condition of the talking machine business in all details of every branch of that business.

Deponent further says that all persons engaged in the talking machine business recognize that there are three types, or kinds, of talking machines now on the market, to wit, the Graphophone (manufactured by deponent's companies), the Phonograph (put out by the Edison Companies), and the Gramophone.

The Graphophone and Phonograph are practically the same, operating on the same principle but different in minor details of construction, as well as in the appearance of the various machines of each type. The Gramophone talking machines are characterized by the flat tablet or disc record, the square or cubical box upon which the record is mounted for rotation, together with a long swinging arm mounted at some distance

from the revolving table that carries the record. This swinging arm carries at its free end the sound box or reproducing device.

These machines deponent has always understood and believed have hitherto been known as "Gramophones," and deponent is fully satisfied that if these machines had ever been designated by any other name than "Gramophone" deponent would have known the same.

Deponent further states that no other talking machines of any kind whatsoever have ever been designated as "Gramophones."

Deponent further states that a number of suits have recently been instituted against him personally and against his companies in this court, among others, a bill in equity filed on or about the 16th day of August, 1900, by the United States Gramophone Company and the Berliner Gramophone Company.

In the bill just referred to, and in paragraph 13 thereof, occurs the statement that the said Berliner Gramophone Company "is engaged in the manufacture and sale of machines for recording and reproducing sound, called the 'Gramophone'; that it is the general practice in trade to call all machines for recording and reproducing sounds 'Talking Machines'; that among the other talking machines now manufactured and sold in the United States is the Graphophone talking machines, manufactured by the said American Graphophone Company." And in paragraph 14 of the said bill occurs the statement that the said Columbia Phonograph Company has been selling graphophones manufactured "by the American Graphophone Company, in competition with the 'gramophones' sold by the Berliner Gramophone Company."

This bill of complaint was signed and sworn to be Emile Berliner as President of the United States Gramophone Company and by Thomas S. Parvin as President of the Berliner Gramophone Company, and signed by Horace Pettit, Howard W. Hayes and Lyons & Bissing as Counsellors and Solicitors of complainants.

Deponent further states from his long experience in the

business and his intimate knowledge thereof as already indicated, that the name by which a particular type of article or machine becomes known in the trade is a most valuable asset. If a machine possesses merit and "selling properties," it soon becomes known by the name given it, while on the other hand the trade name so given suggests at once to all persons engaged in the business the particular machine with which the name has become associated. In terminating litigation formerly existing between the American Graphophone Company, and the Edison interests, this fact was so well recognized that although there was a mutual exchange of licenses, whereby each party was permitted to manufacture under certain patents of the other, yet the contract expressly provided that the Graphophone Company should not call any of its machines "Phonographs," and that the Edison phonograph interest should not call any of their machines "Graphophones," and that the distinctive types covered by these designations should be kept separate and distinct in the future.

In view of all the foregoing, deponent states it as a fact that the exclusive right to sell gramophones or any other articles of manufacture would be practically worthless if the licenses did not at the same time have an exclusive right to use the trade name identified with that article, and by which that article is known.

(Signed) EDWARD D. EASTON.

Sworn to before me this 25th day of October, 1900.

(Signed) WILLIAM E. HILL,
Notary Public, No. 219, New York County.

[SEAL]

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF PENN-
SYLVANIA.

Frank Seaman, Plaintiff,

against

Eldridge R. Johnson, Defendant.

In Equity.

AFFIDAVIT OF ORVILLE D. LADOW.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.
EASTERN DISTRICT OF NEW YORK, }

Orville D. LaDow, being duly sworn, deposes: That he is engaged in business in the City of New York. That for upwards of three years last past he has been engaged in the business of buying and selling Gramophones and Gramophone goods, manufactured by or for the Berliner Gramophone Company, and sold by it; and that in connection with his said business he has had frequent interviews with the officers, directors and employees of said Company, and has been familiar with the course and conduct of its business in a large measure.

That in the conduct of said business, and in such manner, he has had upwards of a hundred interviews with the Defendant herein, Eldridge R. Johnson. That such interviews have been had both at the factory of said Johnson, in Camden, New Jersey, and at the Office of the Berliner Gramophone Company, in Philadelphia, Pennsylvania, or the personal office of Thomas S. Parvin, the President of the Berliner Gramophone Company, a large majority of such interviews having been held in the latter two places.

That such interviews frequently lasted an entire day, and were taken up with discussions of the best type, style, form and design of Gramophones to be manufactured by said Berliner Gramophone Company, and relative to improvements on the types then in use, wherein said Thomas S. Parvin, as President, invariably referred, as to questions of policy, of style,

manufacture, design, and all similar matters of mechanical construction, largely to the Defendant Johnson.

That in the course of conversations between the Deponent and the Defendant, the said Johnson has invariably defended and acknowledged the validity of the Patents issued to Emil Berliner, with one exception, namely, that he expressed his doubt at one time as to the Gramophone being able to sustain its defense in the action brought against it for infringement by the American Gramophone Company; but did not then in any way question the validity of the claims contained in the Berliner Patents themselves.

That above one year ago, in a conversation held in the Hotel Walton, in the City of Philadelphia, and State of Pennsylvania, in the presence of Charles S. Hall, in or about the month of July, 1899, the Defendant Johnson, stated to the deponent emphatically that he had had occasion to study, with the utmost care as to detail, and with the assistance of his Attorney, the various claims of Emil Berliner to the Gramophone Patents; and that he, the deponent, has come to the irrevocable conclusion that the Patents were strong—much more so than he had ever anticipated—and could not be successfully assailed by any person, or evaded, and that any Gramophone or similar Machine would of necessity infringe those Patents.

That Emil Berliner is one of the largest stockholders in the London Gramophone Company.

(Signed) ORVILLE D. LADOW.

Sworn to before me, this 25th day of October, 1900.

(Signed) HENRY B. THOMPSON,
Notary Public (17) New York County.

[SEAL]

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
PENNSYLVANIA.

<i>Frank Seaman, plaintiff,</i>	}	In Equity.
vs.		
<i>Eldridge R. Johnson, defendant.</i>		

AFFIDAVIT OF CHARLES S. HALL.

STATE OF PENNSYLVANIA
CITY AND COUNTY OF PHILADELPHIA } ss.

C. S. Hall, being duly sworn, deposes and says that he has read the affidavit herein verified by O. D. LaDow on the 25th day of October, 1900, and knows the contents thereof;

That the statements therein contained regarding the admission by the defendant herein that the Berliner patents are valid and very broad, are true; and that the defendant declared in the presence of deponent that no one can manufacture gramophones, or a disc machine with a swinging arm without infringing the Berliner patents, set forth in the bill herein;

Deponent further says that on the 23rd day of October, 1900, he caused to be purchased thirteen (13) records similar to the three (3) submitted and filed herein marked "Improved Gramophone Record manufactured by the Consolidated Talking Machine Co., Phila. Pa."

Deponent further says that the Exhibits filed herewith and marked respectively "C. S. H. 1" and "C. S. H. 2" are goods such as were purchased from the Berliner Gramophone Company by Frank Seaman.

(Signed) C. S. HALL.

Sworn to and subscribed before me this 30th day of October A. D. 1900.

[SEAL]

(Signed) S. SALOME BROOKE,
Notary Public.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
PENNSYLVANIA.

<i>Frank Seaman, Complainant,</i>	}	In Equity.
against		
<i>Eldridge R. Johnson, Defendant.</i>		

AFFIDAVIT OF ORVILLE D. LADOW.

EASTERN DISTRICT OF NEW YORK, }
STATE OF NEW YORK, } ss.
CITY AND COUNTY OF NEW YORK, }

Orville D. LaDow, being duly sworn, deposes and says: That he has read the affidavit of Frank Seaman, the Complainant herein, verified this day, and knows the contents thereof.

That the statements therein contained in regard to the sale to The Berliner Gramophone Company of London, Limited, are true to the knowledge of Deponent, and that such sales were made in all respects as in said affidavit stated.

Deponent further says that at the request of the Complainant he has personally made objection to the manufacture in this country of goods, saving for the Complainant Seaman, and has objected to such manufacture and sale abroad, as aforesaid; deponent further says that he has heard produced the records mentioned in the affidavit of Frank Seaman aforesaid; that he also is able to recognize the voice of said Child, as by said Frank Seaman more particularly set forth.

(Signed) ORVILLE D. LADOW.

Subscribed and sworn to before me, this 29th day of October, 1900.

[SEAL]

(Signed) HENRY B. THOMAS,
Notary Public (17) New York County.

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UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF
PENNSYLVANIA.

Frank Seaman, Plaintiff;
vs.
Eldridge R. Johnson, Defendant. } In Equity.

• AFFIDAVIT OF FRANK SEAMAN.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } ss.
EASTERN DISTRICT OF NEW YORK.

Frank Seaman, being duly sworn, deposes that he has been familiar with the gramophone business upwards of four years last past, and has dealt largely in gramophones and gramophone goods, and that the name "gramophone" has been used exclusively in connection with goods manufactured under the Berliner Gramophone patents, deponent having dealt in and with the same pursuant to such business;

Defendant further says that he has examined the card presented with the affidavit of John O. Prescott, verified upon this date, and that the so-called ten dollar (\$10.00) gramophone illustrated upon said card, is the same identical machine that has been heretofore manufactured by defendant for the Berliner Gramophone Company and deponent, saving that it has the improved arm support adopted in the Berliner Gramophone Company's later models.

And deponent further says that in the catalogue and price list of defendant in this cause exhibited, appear other and various machines which are identical with those manufactured by defendant for said Berliner Gramophone Company, and deponent;

Deponent further says that the cuts and designs herewith submitted and to which the deponent begs leave to refer, are those used by deponent and by the customers of deponent in advertising and selling gramophones manufactured by defendant herein for the said Berliner Gramophone Company and for deponent, marketed by deponent and by his said customers,

and which have been so manufactured; sold and marketed for several years last past, and that such cuts and illustrations so exhibited are marked "F. S. 'D'";

Deponent further says that he has learned through the receipt of advices, and copies from various places, that the circulars, printed matter and advertisements referred to in the affidavit of deponent, and in the other affidavits herein, have been sent broadcast throughout the United States;

Deponent further says that he has spent or caused to be spent upwards of one hundred thousand dollars (\$100,000) in advertising the gramophone under such name, and made valuable thereby the exclusive right to use such word "*Gramophone*" so as aforesaid the property of E. Berliner and his assigns, and of deponent; and that such name, so advertised has been used exclusively to distinguish machines manufactured under said Berliner patents, and containing essentially a flat disc record and swinging arm, all as fully set forth in the bill herein;

Deponent further says that the records submitted and filed herewith, were made for deponent by the Berliner Gramophone Company aforesaid, and that the same are in style, name, kind and quality, similar to the records purchased by deponent from said company during the years last past and known by the defendant to be so purchased and dealt in by deponent under said Berliner patents;

That the names, markings and devices upon such records are as follows:—

"E. Berliner's Gramophone Patented 8, 1887, May 15, 1888—May 1890, Feb'y 19, 1895—Oct. 29, 1895, Other patents applied for? Independence Bell by Wm. F. Hooley, 0797 U."

"E. Berliner's Gramophone, Patented Nov. 8, 1887, May 15, 1888—May 6, 1890, Feb'y. 19, 1895—Oct. 29, 1895, Other Patents applied for. Trio from Iolanthe, Sung by the Original Lyric Trio, Wm. F. Hooley, 0293 O."

"E. Berliner's Gramophone, Patented 8, 1887, May 15, 1888—May 6, 1890, Feb'y. 19, 1895—Oct. 29, 1895, Other patents applied for; Ma Honey Lou, by Edward M. Favor, 0532 I."

Deponent further says that large quantities of the goods purchased and dealt in by him under and pursuant to said business and under such name in this country, were sold and distributed through the vendees of deponent, to the Gramophone Company, Limited, of London, and that upon such machines, so sold by the customers of deponent, deponent received great profits, and that such sales amounted to upwards of one thousand (1,000) machines and fifty thousand (50,000) records, one order for such amount having been received by deponent for use in such London trade; and 82,000 records and upwards, having been so sold in addition;

And deponent further says that the cessation and cutting off of such orders and deponent's said customers, was brought about through the manufacture and sale by defendant, with the consent and acquiescence of the Berliner Gramophone Company of gramophones and gramophone goods to be shipped directly to said London Company, to the loss and damage of deponent in his said business, and that such manufacture, sale and shipment by defendant, and such acquiescence and consent by said Berliner Gramophone Company, were objected to, and protested against, and never ratified or consented to in any way by deponent.

Deponent further says that from the thirteen (13) records purchased as set forth in the affidavit of C. S. Hall, deponent is able to recognize in the announcement preceding the record in many cases, the voice of C. G. Child, for a long period of time the record-maker for the Berliner Gramophone Company, while deponent was engaged in furnishing talent for the production of records; and that on the three (3) records, namely, The Man Behind the Gun, Hands Across the Sea, and Limburger Cheese, filed with the affidavit of said Hall in this cause deponent is able distinctly and unmistakably to recognize the voice of said Child in such announcement upon two.

(Signed) FRANK SEAMAN.

Sworn to before me this 29th day of October, 1900.

(Signed) HENRY B. THOMAS,
Notary Public 17, New York County.

[SEAL]

IN THE CIRCUIT COURT OF THE U. S. FOR THE EASTERN DIST.
OF PENN.

Frank Seaman, Complt.,

vs.

Eldridge R. Johnson, Deft.

In Equity.

AFFIDAVIT OF C. A. L. MASSIE.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.

Charles A. L. Massie, being first duly sworn, deposes and says: I am of lawful age, and reside in the City of New York. I am an attorney-at-law, and a Registered Patent Attorney. I was for a number of years an Assistant Examiner of Patents in the U. S. Patent Office, and for nearly three years last past have been associated with Philip Mauro Esq., in charge of Mr. Mauro's New York office, and as associate patent counsel for the American Gramophone Co. While in the Patent Office my duties consisted in examining applications for patent, in construing and passing on the claims thereof, and in considering and determining questions of patentability etc. Since being with Mr. Mauro as counsel for the American Gramophone Co. as above, my attention has been devoted in particular to the talking machine art and the patents and other printed publications relating to that art.

I have read the U. S. patents granted upon the application of Emil Berliner, of Washington, D. C., and believe I understand the same. I have also seen and examined a number of the talking machines made for the Berliner Gramophone Co. (as I am informed and believe by the defendant herein) and known as "Gramophones"; and I believe I understand the construction and mode of operation thereof.

Claim 5 of U. S. Letters-patent No. 534,543, granted Feb. 19, 1895, upon the application of the said Emil Berliner is for the method of reproducing sounds from a record of the same,

which consists in doing two (2) things by and in accordance with that record. These two things are: (1) vibrating a "stylus"; and (2) propelling or feeding the same along the record.

A "record" as understood in this art, and as described in the patent under consideration, consists of a tablet or disc having a slight (spiral) groove containing irregularities corresponding to sound-waves,—the same being capable (when in operative connection with a "talking-machine") of giving forth an audible reproduction of the sounds. It also consists of the irregularities themselves that constitute the very record of the sounds. The patentee constructs what may be designated a potter's wheel or "turn table" for rotating this "record disc" and thereby causing the record-groove to pass under the "stylus"—which is the instrumentality for reproducing the sound. The irregularities of the record-groove cause the "stylus" to *vibrate*; the patentee further proposes that the stylus and its mounting shall be fed bodily throughout the entire groove. For this purpose he directs the stylus to be mounted on the end of an arm that is pivoted at some distance from the record so as to be free to swing across the latter. By this means he accomplishes the twofold purpose called for by his claim 5, viz.: he both *vibrates* the stylus by and in accordance with the record, and at the same time *propels* the stylus along the record because the spiral groove acts as a feed screw to feed the stylus on its swinging arm support.

Turning now to the "Gramophone" already referred to I find that this machine has a turn-table for rotating the record. Upon this turn-table I find a disc having a slight spiral groove; and when the machine is operated I hear the sounds given forth, and I therefore conclude that this disc is a "sound-record." A stout bracket or support is secured to the casing of the machine and a long arm is pivoted thereon to swing across the record-disc. On this arm is mounted a suitable "sound-box" carrying a "stylus" in operative contact with the record-disc. On examining the record-grooves carefully, I find therein minute lateral deviations from the true spiral.

When this "Gramophone" is operated I find that the record causes the *stylus* to vibrate; and as the same sounds are invariably given forth every time the machine is operated with the same record-disc, I conclude that the *vibrations* of the *stylus* are "in accordance with the said record." I find further that as the turn-table revolves, the spiral groove acts as a feed-screw and carries or feeds the *stylus* (radically) across the record-disc. In other words—the *stylus* is propelled along the record by (and in accordance with) the said record.

In conclusion, I find in the "Gramophone" machine referred to the construction described in the said patent (No. 534,543), I find further that it operates precisely as called for by claim 5 of the patent. That is to say: when this "Gramophone" is operated, it performs "The Method of reproducing sounds from a record of the same"; which consists in doing the *very same* two things called for by the claim (*vibrating* and propelling the *stylus*) and by the identical means called for by the claim (by and in accordance with the said record").

I cannot find any other way to operate the "Gramophone" nor have I heard of any other way of employing this machine. I therefore state my conclusion most positively, that this said "Gramophone" is constructed and intended to operate, and does operate to carry out the identical method called for by claim 5 of the said patent, and in no other way whatever.

Claim 35 of the same patent is a combination claim calling for a "sound-reproducing apparatus" (or "talking-machine") consisting of *two* (2) positively enumerated elements, viz.: (1) a *tablet*; and (2) a *stylus*. The *tablet*, according to the claim must be "a traveling tablet having a sound-record formed thereon." This means the disc (already referred to), mounted on the turn-table (also referred to), and this element is found in the said "Gramophone" Machine. The "*stylus*," according to the claim, must be "a reproducing *stylus* (1) shaped for engagement with said record, and (2) free to be (3) vibrated and (4) propelled by the same." In the "Gramophone" machine aforesaid, the *stylus* is a tapering or needlelike rod or pin, and is evidently "a reproducing *stylus* shaped for engagement with said record." (*i. e.* with the

groove). In the said machine, the stylus is mounted on the swinging arm (as already stated) and is therefore "*free to be propelled by the record.*" A for the reasons already given, I find that the said stylus is *vibrated* by record.

I therefore conclude and state most positively that the "Gramophone" machine aforesaid contains the very identical combination and elements and things set forth and claimed by this claim 5.

(Signed) C. A. L. MASSIE.

Subscribed and sworn to before me this 25th day of October, 1900.

(Signed) FRANK COCHRANE,
Notary Public 160, New York County.

IN THE CIRCUIT COURT OF THE UNITED STATES IN
AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

October Sessions, 1900. No. 20.

IN EQUITY.

FRANK SEAMAN, Plaintiff.

vs.

ELDRIDGE R. JOHNSON, Defendant.

And now, October 22d, 1900, upon motion of the plaintiff, Frank Seaman, by Russell Duane and Waldo G. Morse, his attorneys, and upon the reading of the plaintiff's bill in said cause this day filed, and properly verified, and upon the affidavits of Waldo G. Morse, Henry K. Smith and Charles S. Hall, filed therewith and duly verified, and also certain exhibits filed therewith verified by affidavit, this Court doth grant and award a restraining order pursuant to the act of Congress in such case made and provided, restraining the said defendant, Eldridge R. Johnson, his servants, employees and agents and all other persons claiming to act under his authority, until the coming of this case before the Court at a time to be hereafter set, from the notice thereof given to the defendant, from manufacturing, selling, giving away, delivering or trading with any of the gramophone records, matrices, machinery or appliances for the production thereof or goods made by him under certain patents held by the Berliner Gramophone Company as averred in said bill or manufactured by him by or for, or which are the property of the Berliner Gramophone Company or any person for the sale or use of them or any of them upon patterns, designs, models, forms or machinery paid for in whole or in part by them or either of them to the exclusive right to the use whereof the plaintiff, Frank Seaman, is entitled under contracts entered into between himself and the Berliner Gramophone Company or to the exclusive right to make, sell and use which the said Berliner Gramophone Company and the United States Gramophone Company or either of them is entitled under and pursuant to the patents aforesaid; and that the defendant, his servants, agents or employees, pending said hearing be restrained from advertising to sell or give away any of the gramophones, gramophone records or goods and from selling or offering for sale any goods whatsoever under the name, style or designation of gramophones, or gramophone goods and from the use

or employment of the name "gramophone" in any manner, or ever; and from using or employing in his said business or in his advertisements, circulars or printing in any manner the name of the "Consolidated Talking Machine Company of America," or the name "The Consolidated Talking Machine Company," or any other term or other designation so nearly resembling the same as to lead or deceive the public.

And this Court doth further order and rule that upon said affidavits and such other and further affidavits as may be filed with the Court on or before the 30th day of October, 1900, the defendant show cause, if any there be, why the aforesaid restraining order should not be had and continued until the final hearing and determination of this rule.

And let a copy of this order and of said bill be served upon the defendant aforesaid, the same to accompany the subpoena served on said bill.

BY THE COURT

Endorsed: 20. Oct., 1900. Frank Seaman vs. Eldridge R. Johnson. Restraining Order. Filed Oct. 22, 1900. Samuel Bell, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES
AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

October Sessions, 1900. No. 20.

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

ELDRIDGE R. JOHNSON, Defendant.

October 26th, 1900. The restraining order granted October 20, 1900, is hereby modified so as to read as follows—the defendant is hereby covered by the original order to stand over for consideration upon a motion for a preliminary injunction, if the complainant shall be advised to make such motion:

And now, October 22d, 1900, upon motion of the plaintiff, Frank Seaman, by Russell Duane and Wabbe G. Morse his attorneys, and upon the reading of the plaintiff's bill in said cause this day filed

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BY THE COURT.

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and properly verified and upon the affidavits of Waldo G. Morse,
Henry K. Smith and Charles S. Hall filed therewith and duly veri-
fied and also certain exhibits filed therewith verified by affidavit, this
Court doth grant and award a restraining order pursuant to the Act
of Congress in such case made and provided, restraining the said
defendant, Eldridge R. Johnson, his servants, employees and agents
and all other persons claiming to act under his authority, until the
hearing of this case before the Court at a time to be hereafter set,
and due notice thereof given to the defendant, from manufacturing,
buying, selling, giving away, delivering or trading with any of the
gramophone records, matrices, machinery or appliances for the pro-
duction thereof which are the property of the Berliner Gramophone
Company or which were made by him for the Berliner Gramophone
Company, or which were made with patterns, designs, models, forms
or machinery paid for in whole or in part by Berliner Gramophone
Company, and that the defendant, his servants, agents or employees
pending said hearing be further restrained from advertising to sell
or give away any of the gramophones, gramophone records or goods,
covered by this restraining order.

And this Court doth further order and rule that upon said bill
and affidavits and such other and further affidavits as may be filed
with the Court on or before the 30th day of October, 1900, the
defendant show cause, if any there be, why the aforesaid restraining
order should not be had and continued until the final hearing and
termination of this cause.

And let a copy of this order and of said Bill be served upon the
defendant aforesaid the same to accompany the subpoena prayed in
said Bill.

BY THE COURT.

Entered: 20. Oct., 1900. U. S. C. C. Seaman vs. Johnson.
Modifying order of Oct. 22. Filed Oct. 26, 1900. Samuel
Clerk, H. R.

THE UNITED STATES CIRCUIT COURT IN AND
OF THE EASTERN DISTRICT OF PENNSYLVANIA.

October Sessions, 1900. No. 20.

IN EQUITY.

FRANK SEAMAN.

vs.

ELDREDGE R. JOHNSON.

To the Clerk of said Court:

Enter my appearance for Eldredge R. Johnson, defendant in the above entitled suit.

FRANK P. PRICHARD,
Attorney for Defendant.

November 2, 1900.

Endorsed: U. S. C. C. Oct. Sess., 1900. No. 20. In
Frank Seaman vs. Eldredge R. Johnson. Order for Appearance
Defendant. Frank P. Prichard. Filed Nov. 2, 1900. Same
Clerk.

W. G. M.

CIRCUIT COURT OF THE UNITED STATES FOR THE
SOUTHERN DISTRICT OF NEW YORK.

IN EQUITY.

No. 7535.

BERLINGER GRAMOPHONE COMPANY and UNITED
STATES GRAMOPHONE COMPANY,

vs.

NATIONAL GRAMOPHONE CORPORATION.

To the Honorable the Judges of the Circuit Court of the United States for the Southern District of New York.

Your orators, the Berliner Gramophone Company, a corporation organized and existing under the laws of the State of Virginia, a citizen and corporation of said State, and the United States Gramophone Company, a corporation organized and existing under the laws of the State of West Virginia and a citizen and corporation of said State, said corporations having places of business at Philadelphia, Penna., and Washington, D. C., respectively, and elsewhere, in this their amended Bill of Complaint against the National Gramophone Corporation, a corporation organized and existing under the laws of the State of New York and a citizen of said State, and the upon your orators complain and say:

That, as your orators are informed and believe, and prior to the month of May, 1887, Emile Berliner, then a resident of Washington, in the District of Columbia, made and constructed a talking machine

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ey for Defendant.

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that said Berliner and others for the purpose of manufacturing and selling said machine and machines based on the same principle, organized the corporation entitled United States Gramophone Company, being one of the complainants herein; that said Berliner and said corporation in connection with manufacture and sale of said machine and in exploiting the same applied thereto as a trade mark and name the arbitrary and coined word "gramophone"; that said United States Gramophone Company by assignments, transfers and contracts became possessed of all the right, title and interest in and to said machines and in and to the good-will in connection therewith possessed at any time by said Berliner, and in and to the word "Gramophone" as a distinguishing mark and name; that thereafter and on or about the 11th day of October, 1895, the Berliner Gramophone Company was incorporated with the knowledge and consent of said United States Gramophone Company, and said Berliner, to facilitate the manufacture and sale of said talking machines, and that said companies were connected together by contracts and licenses, and have built up a large, profitable and growing business in the manufacture of talking machines; that the word "gramophone" has always been an important, conspicuous and distinguishing part of the corporate names of both of said companies, and has been used by them extensively in the advertisement of said talking machines by placing the same upon said talking machines, and the records for the same, and the circulars relating thereto; that the use of said word in connection with said talking machines has been both by itself and as a part of the corporate name; and that your orators now are, and ever since about the date of the organization of said Berliner Gramophone Company and by reason of transfers to said Berliner Gramophone Company have been, the sole owners of said business and of the right to use said word "gramophone" in trade names or as a trade-mark or otherwise in connection with the business of making and selling said talking machines.

And your orators further show unto your Honors that the said defendant, National Gramophone Corporation, as your orators are informed and believe, well knowing all the facts hereinbefore set forth and contriving to injure your orators and to deprive them of the gains, profits and advantages which otherwise would have accrued to them from the use of the word "gramophone" in connection with their trade-names and as a trade-mark, and without the license or permission of your orators, and against their will and protest, and violation of their rights and with the intent to unlawfully appropriate to itself the benefits and advantages accruing to your orators, reason of their corporate names, has adopted as its corporate name the words "National Gramophone Corporation," which appears the important, conspicuous and distinguishing word "gramophone" first used by said Berliner and first adopted as a part of a corporate

name by said United States Gramophone Company and Berliner Gramophone Company, with the full consent of said Berliner, thereby misleading the public to believe that the three corporations are interconnected and are engaged in the production of gramophones which have now become famous as talking machines throughout the world; that for the purpose of further misleading the public this defendant in addition to adopting the important and distinguishing word of your orators' trade names has, as your orators are informed and believe, entered upon the manufacture and sale of a talking machine closely resembling the talking machine made by your orators, which machine made by said defendant is said by it and by its representatives to be an improved gramophone.

And your orators aver, upon information and belief, that by the unlawful and wrongful use of the said corporate name "National Gramophone Corporation," this defendant has been enabled, unlawfully and fraudulently, to place the product of said corporation upon the market and to accomplish the sale thereof as and for your orators' product and as an article in connection with which your orators' skill and knowledge have been exercised.

And your orators aver that the said fraudulent purpose of the defendant to market and sell talking machines similar to your orators' product upon the established reputation of your orators and as and for a manufacture in connection with your orators' skill and knowledge has been exercised, promoted and effectuated by the adoption and use of said simulated corporate name and especially by the use of the word "gramophone" long associated in the minds of the trade and others with your orators' manufacture and that the whole scheme of the organization of said corporation under the name of the National Gramophone Corporation, all of which have happened long since the incorporation of the Berliner Gramophone Company, your orator, and the things which said National Gramophone Corporation and its incorporators have done, are a fraudulent attempt, craftily devised and very cunningly set in motion, to divert to the defendant the good will and reputation of many years which your orators have enjoyed and made of value in connection with their products, which scheme, your orators aver, is in all respects, fraudulent and inequitable because it promotes and enables an unfair competition as hereinbefore set forth and your orators pray that such scheme may in all its parts be corrected and checked as equity may require according to the facts and the circumstances of the case as they shall hereafter be made to appear.

And your orators further allege, on information and belief, that the said defendant has done the acts herein complained of in the Southern District of New York and elsewhere in the United States and further say that by the adoption of said word "gramophone" as a part of its corporate name by the defendant and by its representa-

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tions concerning the talking machine made by it, said defendant has
thereby infringed and violated the rights of your orators and that
by reason of said infringement and in violation of the rights of your
orators as aforesaid the defendant has derived and received, and is
still deriving and receiving, great gains and profits and your orators
have been and are now being deprived of great gains and profits which
they would have derived and received, and would not be deriving and
receiving but for said wrongful act of said defendant, and your orators
have further sustained and suffered large and irreparable damages
therefrom.

And your orators further say on information, and belief, that the
damages caused by said defendant to your orators amount to over
ten thousand dollars and that the profits which your orators have
been deprived of but which have been and now are being received
and enjoyed by the said defendant amount to over two thousand dol-
lars, all of which your orators would have received and enjoyed but
for the wrongful acts of said defendant.

And your orators pray that the said defendant may be compelled
by the decree of this Honorable Court to account for and pay over
to your orators all such gains and profits as have accrued or arisen,
which have been derived or acquired by said defendant, and all
such gains and profits as your orators would have received but
for the wrongful acts and doings of said defendant, and all
damages which your orators have sustained thereby, and that this Hon-
orable Court will assess the same or cause them to be assessed under
direction as provided by law.

And your orators pray that the said defendant, its officers, asso-
ciates, attorneys, solicitors, clerks, servants, agents and workmen, may
be perpetually enjoined and restrained, by the decree of this Hon-
orable Court, from directly or indirectly using or causing to be used
in any manner the name "Gramophone" as a part of its corporate
name, or as a part of its trade-name, or in connection with any appa-
ratus, structure or machine not made by your orators, or in connec-
tion with any advertisements or public announcements, or in any way
in connection with their business, and from infringing upon or violat-
ing the rights of your orators in any way whatsoever; and that the
defendant may be decreed to pay the costs, charges and disbursements
of this suit, and that your orators may have such other and further
relief as the equity of the case may require and as to your Honors
may seem meet.

In the end, therefore, that the defendant, may, if it can, show
that your orators should not have the relief hereby prayed and full,
and perfect answer make (but not under oath, answer under
being hereby expressly waived), according to the best of its
information and belief; and several matters hereinbefore averred
to be true as particularly set forth as particularly set forth as particularly para-

graph by paragraph and they were thereto severally and specifically interrogated, may it please your Honors to grant unto your orators writ of *subpoena ad respondendum*, issuing out of and under the seal of this Honorable Court, and directed to the said defendant, National Gramophone Corporation, commanding it to be and appear and make answer unto this Bill of Complaint and to perform and abide by such order and decree herein as may seem required by the principles of equity and good conscience.

May it also please your Honors to grant unto your orators a provisional or preliminary injunction issuing out of and under the seal of this Honorable Court enjoining and restraining the defendant, officers, associates, solicitors, clerks, servants, agents and workmen, the same purport, tenor and effect as hereinbefore prayed for in regard to said perpetual injunction.

And your orators will ever pray, etc.

BERLINER GRAMOPHONE COMPANY,

By Mitchell, Bartlett & Brownell, Solicitors.

UNITED STATES GRAMOPHONE COMPANY,

By Mitchell, Bartlett & Brownell, Solicitors.

C. E. MITCHELL,

HORACE PETTIT,

HOWARD W. HAYES,

Of Counsel.

CIRCUIT COURT OF THE UNITED STATES, WESTERN
DISTRICT OF VIRGINIA.

W. G. M. 2.

IN EQUITY.

SAMUEL FORD and WILLIAM C. SMITH, individually and
behalf of such stockholders of the BERLINER GRAMOPHONE
COMPANY as may join in this action, Plaintiffs,

against

BERLINER GRAMOPHONE COMPANY, Defendant.

To the Judges of the Circuit Court of the United States, for the Western District of Virginia:

Samuel Ford, a citizen of the State of Pennsylvania, residing in the City of Philadelphia, in said State, and William C. Smith, a citizen

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of the State of New York, residing in the Borough of Brooklyn, City
of New York, in said State, on behalf of themselves and of such stock-
holders of the Berliner Gramophone Company, the defendant herein,
as may elect to join in this action, bring this their bill against the Ber-
liner Gramophone Company, a corporation organized under and by
virtue of the laws of the State of Virginia, and having its principal
place of business in the City of Roanoke in said State, and thereupon
your orators complain and say:

I. That the defendant, the Berliner Gramophone Company, is a
corporation chartered and organized under and by virtue of the Laws
of the State of Virginia, and having its principal office and place for
the transaction of business in the City of Roanoke, in said State.

II. That your orator, William C. Smith, is, and during the times
and at the time of the transaction of which he complains, which are
set forth herein, was a shareholder of the defendant corporation, and
that this suit is not a collusive one to confer on a Court of the United
States jurisdiction of a case of which it would not otherwise have
cognizance, and that during all such times he has been the owner of
one hundred shares of such stock.

III. That your orator, Samuel Ford, is and ever since the organiza-
tion of the corporation defendant herein, and at all the times of the
transactions of which he complains was, and now is a shareholder in
the defendant corporation owning one hundred and fifty shares of
stock in the same, and that this suit is not a collusive one to confer
on a court of the United States jurisdiction of a case of which it would
not otherwise have cognizance.

IV. That on or about the 2d day of September, 1895, the United
States Gramophone Company, a corporation organized under the laws
of the State of West Virginia, which said corporation was then the
owner of certain patents upon talking machines and sound-reproducing
inventions, granted to one Emil Berliner, as licensor entered into a cer-
tain agreement in writing dated on that day with one William C.
Smith of New York City, wherein and whereby it assigned, trans-
ferred and set over to said Jones as licensee the exclusive right to
manufacture, sell, lease and deal in said inventions upon the payment
of certain royalties therein particularly set forth, and further pro-
vided that the party of the second part should diligently and in busi-
nesslike manner prosecute the said business in the interests of such
licensor, and further provided that said Jones might form a com-
pany to assume, carry out and be responsible for the said obligation,
and that the same might thereupon be assigned to the said company,
the obligation of said Jones thereupon ceasing. Said contract like-
wise provided that the party of the second part should make a true
and accurate return of its sales or leases of such goods monthly, and
should show its books to the licensor, duly settling all royalties on or
before the end of the month following the date upon which they

became due. Said contract likewise provided that in case of the non-fulfillment of the obligations specified in regard to the payment of royalties and the conduct of the business aforesaid assumed by the party of the second part, the party of the first part should have the right to give notice in writing of such nonfulfillment and upon failure of the party of the second part, the licensee, for a period of sixty days from the receipt of such notice the party of the first part, the licensee, might declare the agreement null and void and terminate all rights of the party of the second part, the licensee, thereunder.

V. That thereafter an additional and further agreement was likewise entered into by and between the same parties dated on the 1st day of October, 1895, modifying the amounts payable under said contract, but leaving the same otherwise unchanged.

VI. That thereafter said contract was duly assigned and transferred by said Jones, the licensee, to the defendant herein, and the defendant herein thereupon assumed said contract and entered upon the discharge of its obligations.

VII. That said contract was and is valuable and constituted and constitutes the chief asset or resource of the defendant herein, but that the same is liable as aforesaid to be terminated upon notice in case of any breach by the defendant.

VIII. That after the incorporation of the defendant and hereinafter and in or about the year 1899, certain stockholders of the defendant corporation combining and confederating together for the purpose of securing the control and management of the same and conducting the affairs of the defendant in the interest and for the benefit of themselves and not in the interest or for the benefit of the corporation defendant, unlawfully and in fraud of the rights of the defendant corporation and of your orators and the other stockholders of said corporation, transferred and set over unto certain persons of your orators unknown their stock in said corporation defendant into a so-called voting trust, receiving in exchange for their certificates of stock in said corporation the trust certificates of said trustees with the agreement and understanding that the said stock so transferred and set over should be voted in the interest of said majority stockholders and against the interest of your orators and of said corporation and of its stockholders, and that such transfer agreement and trust were and are wholly fraudulent, illegal and void.

IX. That the existence of said voting trust has only just come to the knowledge of your orators or either of them, and in same they have nowise participated, nor have they in anywise ratified the same or consented thereto.

X. That through and by virtue of said voting trust the management and control of the affairs of said corporation has been kept and maintained and will be kept and maintained in the hands of the

present officers and directors who are engaged in managing the business of said corporation for their own individual benefit and not for the benefit or in the interest of said defendant corporation or your orators.

XI. That the defendant corporation has never manufactured the goods, machines or appliances covered by such patents the license wherein was so as aforesaid transferred to it, but has obtained the same to be manufactured by other and different persons upon contracts.

XII. That in letting the contracts for the manufacture of such goods the officers and directors of said company have unlawfully and fraudulently with the knowledge and consent of the persons comprising said voting trust, but without the knowledge or consent of your orators, paid for goods supplied to said corporation great and excessive prices in fraud of the rights of your orators and of said corporation, and have personally and of their own account received from such manufacturers, and particularly from one Eldridge R. Johnson, great sums of money monthly out of and from such excessive payments so made to said Johnson and other persons in breach of their trust and duty as directors and officers of the defendant corporation and to the great loss and damage of the same and of your orators.

XIII. That by reason of the personal interest of said directors and trustees in the contracts and supplies aforesaid they have failed, neglected and refused, and still continue to refuse to conduct the business of such corporation to its own best interest, but on the contrary declined to obtain goods to be manufactured for it where the same may be secured to the best advantage, all for their own individual and private gain as aforesaid.

XIV. That heretofore and on or about the 5th day of June, 1900, your orators and directors and managers of the defendant proposed to enter into a certain contract or agreement dated upon that day for the transfer of their said majority holdings to a new corporation to be formed, and which said corporation should act in and as a substitute for said voting trust so as aforesaid established such new corporation to own the stock of defendant herein, and issue its voting trust certificates in exchange for the voting certificates so as aforesaid put out and held by such directors, officers and managers.

XV. That the agreement or contract for such combination or vote was dated on the 5th day of June, 1900, and was secretly made among said majority stockholders of defendant corporation.

XVI. That no notice of the same was given to your orators or to them, or to any of said minority stockholders, but on the contrary the same was kept secret from them.

XVII. That your orators having casually learned that such a meeting had been made, applied for information concerning the same but were by said officers, directors and managers and by the stockholders for said corporation and the trust company representing the same and the persons in such business and by each and all of them, who refused any and all information concerning the same except that one of your orators was enabled to obtain a certain circular letter of August 1st, 1900, setting forth some of the terms of said contract.

XVIII. Upon, however, attempting to learn the terms of the agreement referred to in such circular, your orators were refused any or all information or knowledge of or concerning the same.

XIX. That such voting trust or consolidation so as aforesaid legally attempted to be made provides among other things that a new corporation to be known as the Consolidated Talking Machine Company of America should be formed, and that the stock of the defendant company and of the said United States Gramophone Company its licensor under the aforesaid contract the control of said corporation should be transferred to it and that said corporation should be managed and controlled by the illegal and fraudulent voting trust so as aforesaid to be formed.

XX. That as a part of said secret collusive and fraudulent conspiracy so entered into by such officers and managers in violation of their duty and of the rights and interests of the defendants herein and of your orators, said officers, directors and agents have forfeited or about to forfeit their said contract or license with and under the United States Gramophone Company, aforesaid, that notice of forfeiture under and pursuant to the terms of said contract has been given to said officers and agents by said United States Gramophone Company.

XXI. That said officers, directors and agents wilfully and deliberately refused to perform the terms of said contract of license the defendant to be performed and as a result thereof and in the near future if they shall continue their said failure and refusal said license or agreement will be forfeited by the licensor and be lost to the defendant to the great and irreparable injury of the defendant and your orators, and to the great advantage and benefit of said officers and directors who have joined in said conspiracy and arrangement, and have received or are about to receive from the Consolidated Companies so as aforesaid to be established the great and irreparable loss and damage of your orators.

XXII. That the defendant has closed its offices and has discharged its employees and is engaged in no business, but that on the contrary, it has turned over or is about to turn over to the Columbia Talking Machine Company of America all its properties, rights and interests in the Columbia Talking Machine Company of America.

good will of business, including its rights under said license, and its property in and to the name "Gramophone," which it secured thereby. And also and likewise that the defendant through its officers, agents and directors is permitting and is about to permit its goods and matter to be appropriated and used by said corporation and that the defendant by reason of the control of its affairs said, has surrendered, or is about to surrender and part with nearly all of its assets and property fraudulently and without consideration and under and by the arrangement, direction of its said directors, officers and agents, and that for the value of its said contract, it is and will be wholly unable and unable to pay its debts which amount to upwards of ten thousand dollars.

XIII. That the assets of the defendant are very small saving contract and consists of less than one thousand dollars in cash goods of any considerable value, and that in case the officers agents are allowed so as aforesaid to forfeit said contract, the stock of your orators will be wholly lost, and they will have no redress.

XIV. That under and by virtue of said consolidation agreement made by the circular aforesaid, the majority holders of the stock of the defendant corporation, and of said United States Company, about to combine under and by virtue of said fraudulent and agreement to enter into a new corporation to be known as Consolidated Talking Machine Company of America aforesaid, to receive voting trust certificates for stock in said new consolidated company in exchange for their stock in said separate companies and that by reason of such consolidation and voting trust the orators and all of the majority stockholders of defendant corporation will be defrauded and deprived of their rights as stockholders and will be unable to exercise the same or protect their interests in any way whatever, but that their stock will be wholly subject to the whim and caprice of such voting trust.

XV. That the profits upon the business of the defendant corporation during several years last past have been very large, and that the damage to your orators and to said corporation defendant, of the premises is and will be very great and wholly irreparable and incapable of ascertainment, computation or determination in excess of two thousand dollars, to wit: being in excess of twenty thousand dollars, and to the corporation and other minority stockholders of one hundred thousand dollars.

XVI. That by virtue and reason of such fraudulent and illegal acts and combinations aforesaid in such abuse of their trust

on the part of the directors and officers of said corporation, defendant, it is useless to request them or either of them to institute or prosecute this suit.

Wherefore, your orators stand in need of equitable relief from the relief save in this Honorable Court, and pray:

First.—That your Honors grant to your orators your writ of injunction, special until the hearing and perpetual thereafter, enjoining and restraining the said Berliner Gramophone Company, defendant, its officers, directors and agents, and all persons claiming under its authority, from selling, assigning, transferring or conveying over unto the Consolidated Talking Machine Company, or to any other corporation or person, the rights, license and privileges secured to it under the contract aforesaid, or any part thereof, and likewise from in such manner, or any manner selling, assigning, transferring or parting with the right to the use of the names, marks, designations or appellations connected therewith or appurtenant to them.

Second.—That your Honors grant unto your orators your writ of injunction restraining the said Berliner Gramophone Company, defendant, its officers, directors and agents, and all persons claiming under it from doing or performing or allowing to be done or performed any act or thing whatsoever in pursuance or consummation or furtherance of the said illegal voting trust aforesaid or in the management, control of the property of defendant corporation, or otherwise whatsoever, and that the said defendant, its officers, agents and servants be enjoined from allowing the Consolidated Talking Machine Company of America, or any one in its behalf or in combination or combination of its holding of stock in defendant corporation to vote at any meeting whatsoever for directors or officers of defendant corporation or take any part in the management thereof by virtue of such holding of its said stock.

Third.—That the officers and directors of defendant corporation, so as aforesaid elected, under, pursuant to and by virtue of the said unlawful combination or voting trust so as aforesaid heretofore existing be removed from their offices as such because of such election and likewise because of their aforesaid breaches of trust to the defendant and to your orators.

Fourth.—That your Honors appoint a Receiver pending the determination of this suit, to take charge, care and custody of the property, rights and assets of said defendant corporation, and to conserve the same and prevent the waste and spoilation thereof at the hands of the officers, directors and agents.

Fifth.—That your orators may have such other and further relief

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in the premises as the nature of the circumstances of the case may require and which to your Honorable Court may seem equitable.

May it please your Honors, the premises considered, to grant unto your orators not only a writ of injunction issuing out of and under the seal of this Honorable Court enjoining the said defendant as before prayed, but also a writ of subpoena to be directed to the said Berliner Gramophone Company, the defendant, therein and thereupon commanding it at a certain time and under a certain penalty therein to be limited personally to appear before this Honorable Court and there, full, true, direct and perfect answer make, but not under oath or affirmation, the benefit of which is expressly waived by your orators to all and singular the premises, and further to stand to, perform and abide by such other order, direction and decree therein as this Honorable Court shall seem meet, and which may be made and done in the premises and as shall be agreeable to equity and good conscience.

And your orators will ever pray.

Attorney for plaintiffs.

No. 10 Wall Street,
New York, N. Y.

UNITED STATES OF AMERICA,
SOUTHERN DISTRICT OF NEW YORK,
OF NEW YORK, CITY OF NEW YORK, } ss.

day of September, one thousand nine hundred and one, personally came William C. Smith, to me known, and he came to be one of the plaintiffs, who made solemn oath that the foregoing Bill of Complaint subscribed by him and the contents thereof, and that the same is true of his own except as to the matters therein stated on information and as to those matters he believes it to be true.

and subscribed before me this day of September, 1900.

UNITED STATES OF AMERICA,
DISTRICT OF PENNSYLVANIA,
OF PHILADELPHIA, CITY OF PHILADELPHIA. } ss.

day of September, one thousand nine hundred and one, personally appeared Samuel Ford, to me known and he came to be one of the above plaintiffs, who made solemn oath

that he has read the foregoing Bill of Complaint subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

Sworn to and subscribed before me this
September, 1900.

W. G. M. 3.

IN THE CIRCUIT COURT OF THE UNITED STATES
AND FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

ELDRIDGE R. JOHNSON, Defendant.

Roland S. Morris, being duly sworn according to law, deposes and says that he is of counsel in the case of Frank Seaman, complainant vs. The Berliner Gramophone Company, and that the documents attached hereto is a true and correct copy of the proposed order in the case.

(Signed) ROLAND S. MORRIS

Sworn to and subscribed before me this 30th day of October, A. D. 1900.

(Signed) S. SALOME BROOKE,
Notary Public.

(Seal.)

IN THE CIRCUIT COURT OF THE UNITED STATES
-THE WESTERN DISTRICT OF VIRGINIA-

IN EQUITY.

FRANK SEAMAN, Complainant,

vs.

THE BERLINER GRAMOPHONE COMPANY, Defendant.

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The defendant in this cause, the Berliner Gramophone Company, having, by counsel, on the 17th day of August, 1900, submitted a motion to dissolve the injunction awarded by one of the judges of this court on the 25th day of June, 1900, and the said motion having been on the said 17th day of August, 1900, docketed and continued, and the same having been further heard on the 7th, 8th, 9th, and 11th days of September, 1900, and, thereupon, on or before the 25th of September, 1900, there then having been filed in the record of this cause sundry affidavits and exhibits on behalf of the complainant and of the defendant, respectively, to be considered upon said motion as well as arguments of counsel having been submitted together with numerous exhibits accompanying said affidavits theretofore filed and the court not at that time being advised of its conclusion, taking time to consider; and the complainant having, on the 24th day of September, 1900, obtained a rule from this court returnable to the 29th day of September, 1900, requiring the defendant to show cause if it had and could show why the restraining order entered on the 25th day of June, 1900, should not be enlarged as specified in said rule, and the defendant, the Berliner Gramophone Company, having appeared on said 29th day of September, 1900, filing its answer to said rule, whereupon such proceedings were had as appears from the order entered herein on said 29th day of September, 1900, that the further hearing of said motion to enlarge said restraining order was set down for the 10th day of October, 1900, at Abingdon, Virginia, and the parties complainant, and defendant, having appeared on said 10th day of October, 1900, at Abingdon, Virginia, the defendant thereupon filed a number of affidavits as appear in the record, and the complainant filed an additional exhibit entitled "His Master's Voice," the original being marked "filed" in the suit of Ford & Sons vs. The Berliner Gramophone Company, the said exhibit containing in print, these words, "Copyright. Registered Trade Mark, The Gramophone Company, Philadelphia, Pennsylvania. His Master's Voice, Published by the Gramophone Co., Ltd., Printed by J. B. Barrand," and exhibited a copy of the restraining order issued by the Hon. John J. Jackson, one of the Judges of the Circuit Court of the United States for the District of West Virginia on the 25th day of October, 1900, in the suit there styled "Frank Seaman vs. The United States Gramophone Company;" and said motion being argued by counsel, and the court not at that time being advised of its conclusion, taking time to consider; and the said defendant having, on the 10th of August, 1900, filed at August Rules, 1900, a certain answer purporting to be its answer to the bill of complaint in this cause with exhibits accompanying the same, and the said complainant appearing at the said next succeeding rule day, to wit, September Rules, 1900, filed his exceptions to said answer numbered First to Fifteenth,

both inclusive, and arguments being had upon said exceptions at the hearing of the motion to dissolve had from the 7th to the 11th of September, 1900, and the court not at that time being advised of its opinion but taking time to consider; on this the 11th day of October, 1900, came the parties Complainant and Defendant by counsel, upon consideration whereof it is ordered, adjudged and decreed that the motion made by the Complainant on the 20th day of September, 1900, to enlarge the restraining order entered in this cause on the 25th day of June, 1900, be, and the same is hereby overruled and denied. And it is further ordered, adjudged and decreed that of the exceptions taken by the Complainant to the answer of the defendant aforesaid, namely, the first, second, seventh, eleventh and fourteenth, be, and the same are hereby sustained, and that all other exceptions taken by the Complainant to the answer of the defendant be, and the same are hereby overruled; and, that the said defendant be, and it is hereby permitted to put in another answer in accordance with Equity Rule sixty-four.

And it is further ordered, adjudged and decreed that the motion made in this cause on the 17th day of August, 1900, to dissolve the injunction awarded herein on the 25th day of June, 1900, be, and the same is hereby refused and denied, and that said restraining order and injunction entered as aforesaid on the 25th day of June, 1900, be, and the same is hereby continued until the final hearing of this cause.

W. G. M. S.

IN THE UNITED STATES CIRCUIT COURT, WESTERN
DISTRICT OF VIRGINIA.

IN EQUITY.

SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

AFFIDAVIT OF ELDRIDGE R. JOHNSON.

COMMONWEALTH OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA. } ss.

Eldridge R. Johnson, being duly sworn according to law, deposes and says that he is a resident of the City of Philadelphia, State of Pennsylvania, and is and has been for a number of years past

...said exceptions. At
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manufacturing machinist, having a factory located in Camden, New Jersey. That he has recently become engaged on his own account, independently and separately and apart from any other party, corporation or concern, in the manufacture of Talking Machines, Sound Record and Talking Machines Accessories, and has adopted in this connection for his Talking Machine business the name or style of Consolidated Talking Machine Co., which has no connection in any manner or form with a certain corporation which this deponent is informed exists, though has never done any business, the Consolidated Talking Machine Co. of America. That through an oversight or mistake the name Consolidated Talking Machine Co. of America was attached to one of this deponent's advertisements, which has appeared in the October, 1900, issue of Scribner's Magazine, and also one or two others, instead of the name Consolidated Talking Machine Co., which name and style this deponent has adopted, as heretofore set forth, for use in connection with his Talking Machine business, and to which name and style he claims to have a full and perfect right.

This deponent further states that neither the Berliner Gramophone Company nor any of its officers, has any interest in or connection with Consolidated Talking Machine Co., and never did have, and that said concern and business is owned, operated and controlled solely by this deponent.

ELDRIDGE R. JOHNSON.

born and subscribed before me this 28th day of September,
1900.

T. A. FENSTERMAKER.

Notary Public.

COURT, WESTER
NIA.

A Copy Test,

A. K. FLETCHER, Clerk.

PANY, Defendant
R. JOHNSON.

COURT OF THE UNITED STATES, WESTERN
DISTRICT OF VIRGINIA.

EDFORD and WILLIAM C. SMITH individually, and on behalf of such stockholders of the Berliner Gramophone Company, be in this action, Plaintiff,

against

ELINER GRAMOPHONE COMPANY, Defendant.

according to law.
of Philadelphia.
number of years

CITY AND COUNTY OF PHILADELPHIA, }
STATE OF PENNSYLVANIA. } ss.

Thomas S. Parvin being duly sworn deposes and says:

That he is President of the Berliner Gramophone Company, that the Berliner Gramophone Company, its officers and directors fully and implicitly obeyed the preliminary injunction issued by Honorable Court on June 25, 1900.

In the bill filed in this Court in the suit of Samuel Ford and C. Smith against the Berliner Gramophone Company it is charged that the officers and directors of the Berliner Gramophone Company as such entered into a contract of agreement of June 5, 1900, with one Charles Adamson. The said averment is untrue and the real facts in connection with the organization of the Consolidated Talking Machine Company of America are as follows:

On June 5, 1900, certain of the stockholders of the Berliner Gramophone Company and of the United States Gramophone Company entered into an agreement in writing with Charles Adamson, a copy of which agreement is annexed hereto, marked Exhibit "A." It will be seen from an examination of this agreement that it is merely a contract upon the part of said Adamson to purchase on the part of the stockholders aforesaid to sell their stock in said Companies, and that the said Adamson covenanted to organize a corporation under the laws of the State of New Jersey and to transfer the stock acquired by him to such corporation. In pursuance of said agreement the Consolidated Talking Machine Company of America was organized. The holders of a controlling majority of the stock of the Berliner Gramophone Company entered into this agreement. Amongst the signatures were Thomas S. Parvin, Joseph Goldsmith, Max. H. Biernbaum, Thomas L. Latta, Wm. Armstrong, Wm. S. Lloyd and George Warner, all of whom were present on or about June 5th, three weeks before the injunction was issued in this case.

Deponent is informed and believes that the Consolidated Talking Machine Company of America has not issued any stock certificate nor has it engaged in prospective business up to this point. None of the persons hereinbefore mentioned are officers or directors of the said Company. Mr. Norman Gray is President of the Consolidated Talking Machine Company, but deponent is without knowledge as to the names of other officers or directors.

The letter of August 1st, signed by Charles Adamson, which is annexed hereto, marked Exhibit "B," was sent out without the knowledge of the Berliner Gramophone Company or its officers or directors, neither had the officers or directors of the Berliner Gramophone Company anything to do with the writing of the letter and are not in any way responsible for it, and the same is not the act of the Berliner Gramophone Company.

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This matter of the organization of a new Company is not one of recent consideration for the reason that it has been discussed among some of the stockholders of the Berliner Gramophone Company for several years past, but always with the idea of preserving the business relations existing between the Berliner Gramophone Company and the United States Gramophone Company. What deponent desires particularly to emphasize is that the formation of this new Company has not been precipitate, but has been the result of several years discussion and consideration, and was never intended by the stockholders of either Company to interfere in any way with existing contracts of the Berliner Gramophone Company or the United States Gramophone Company.

Deponent says that the injunction order issued on June 25, 1900, of this Honorable Court is as follows:

The defendant, the Berliner Gramophone Company, its servants, employees and agents, until the further order of this Court, are restrained from selling, delivering or otherwise disposing of, and likewise from permitting or allowing any such selling, delivering or disposing of, within the United States of America, any of the gramophone records, matrices, all goods manufactured by or for the said defendant Company, and referred to in a certain contract made by it with the plaintiff and dated on the 10th day of November, 1899, and exemplified with the plaintiff's bill; and also from likewise selling or allowing the disposition of any other goods wherein the plaintiff has any interest, to any other person or persons than the plaintiff, or those designated by him; save in so far as the defendant is entitled reasonably to sell, deliver or dispose of the same, its officers, directors and stockholders, not for sale, gain or profit, except in the District of Columbia, for use therein as provided in said contract, and except also, and deliveries they may now be bound to make under certain contracts with Tate, Jones & Nellis; provided in the bill, should any such right of delivery exist—but this injunction shall not take effect until the plaintiff, or some one of them, shall execute and file in this cause, a bond, with security to be approved by this court, in the penalty of five thousand dollars, to be paid to satisfy and discharge any costs and damages that may be awarded by the defendant by reason of the suing out of said injunction, in case the same shall be dissolved; and deponent says that no particular has the Berliner Gramophone Company or any of its officers violated the said Injunctive order.

THOMAS S. PARVIN.

and subscribed before me this 28th day of September,

T. A. FENSTERMAKER.

Notary Public.

This Agreement, made June 5, 1900, between Charles Adamson (Purchaser), and the undersigned, holders of the stock and Voting Trust Certificates of the Berliner Gramophone Company and the stock of the United States Gramophone Company (Vendors).

WITNESSETH THAT:

In consideration of mutual promises, the vendors promise other and promise the purchaser to sell, and the purchaser promises the vendors to buy, at the prices and on the terms and conditions hereinafter stated, the said stock and Voting Trust Certificates held by the vendors,—that is to say:

1. For every share of stock of the Berliner Gramophone Company (par value, \$100), whether represented by original certificates or by Voting Trust Certificates, the price shall be \$110, payable, \$50 in the 5 per cent. Gold Collateral Trust Certificates hereinafter described, at par, and \$60 in the new common stock hereinafter described, at par;

2. For every share of common stock of the United States Gramophone Company (par value, \$10), the price shall be \$11, payable, \$6 in the 5 per cent. Gold Collateral Trust Certificates hereinafter described, at par, and \$5 in the new common stock hereinafter described, at par;

3. For every share of preferred stock of the United States Gramophone Company (par value, \$10),—ex dividend of 3 per cent. due,—the price shall be \$15, payable, \$10 in the 5 per cent. Gold Collateral Trust Certificates hereinafter described, at par, and \$5 in the new common stock hereinafter described, at par;

4. The purchaser proposes to sell and transfer the stock acquired by him under this agreement to the Consolidated Talking Machine Company of America, or other new corporation to be organized under the laws of the State of New Jersey, with a capital, of which \$250,000 shall be 5 per cent. non-cumulative preferred stock, to be placed in the treasury of the new Company, and to be sold only for its benefit, and the balance, to an amount to be agreed upon between the new corporation and the purchaser, not exceeding \$1,750,000, shall be common stock—out of which he is to transfer and deliver to the vendors in this agreement, subject to a voting trust as hereinafter prescribed, the new common stock above mentioned. The purchaser further proposes that the new corporation shall cause to be issued and delivered to him 5 per cent. Gold Collateral Trust Certificates, running 20 years, and secured by a deposit with a Philadelphia Trust Company, of all stocks of the Berliner Gramophone Company and the United States Gramophone Company acquired by him.

this agreement, and such other securities as may be deemed desirable to acquire—the form, terms and maximum amount of the said certificates to be agreed upon between him and the said new corporation; and with these said 5 per cent. Gold Collateral Trust Certificates the purchaser proposes to make the deliveries of collateral trust certificates contemplated by this agreement as above;

5. All the new common stock, except a sufficient amount to qualify directors, shall be transferred to Charles Adamson, Thomas S. Parvin, and Emile Berliner, and such other person or persons as may be mutually agreed upon and designated by them, to hold and vote as trustees for a period of ten years, for the additional security of the said 5 per cent. Gold Collateral Trust Certificates. The new stock to be issued to the vendors in this agreement will therefore be the trust certificates of the said voting trust;

6. The purchaser proposes to take from the new corporation an agreement on its part to list its stock, its voting trust certificates and the 5 per cent. Gold Collateral Trust Certificates on the Philadelphia Stock Exchange;

7. All stock certificates of the Berliner Gramophone Company, except enough to qualify directors, all Voting Trust Certificates representing stock in that Company, and all stock certificates of the United States Gramophone Company held by the vendors signing this agreement, except enough to qualify directors, shall, on notice from the purchaser, be deposited with a Philadelphia Trust Company, to be designated by the purchaser, in exchange for deposit receipts, which in turn will be exchanged for 5 per cent. Gold Collateral Trust Certificates and the new common stock when ready for delivery;

8. The purchaser reserves the right to cancel and terminate this agreement, unless, before July 1, 1900, this agreement has been approved by holders of a majority in interest of the stock of the Berliner Gramophone Company;

Signatures on counterparts hereof shall be equivalent to signatures hereon.

Witness the following signatures and seals, the day and year afore-

.....Purchaser.

(Seal.)

VENDORS.

Names.	Seals.	Residences.	No. of Shares.	Kind of Shares.
.....	(Seal)
.....	(Seal)
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United States Gramophone Company.

Stewart Building, Cor. 6th and D Sts., N.W.

Washington, D. C., October 5, 1900.

THOS. S. PARVIN, Esq.,

Pres. Berliner Gramophone Company.

Girard Building, Philadelphia, Penna.

Dear Sir:—At a special meeting of the Board of Directors of the Company held to-day, the notice of breach of contract served on the Berliner Gramophone Company on August 23d last, was read and annulled, but it did not nor did it intend thereby to waive breaches of contract themselves, but as to them it reserved its right.

I enclose copy of the resolution embodying said action duly authenticated under the seal of the Company and attested by the Secretary.

Yours very respectfully,

J. W. NORDLINGER,

Mgr. U. S. G.

At a special meeting of the United States Gramophone Company was unanimously

It appeared that the Company to which notice of breach of contract was given on August 23d last, and that it was strenuous and it appeared through its action unless said resolution was annulled and it is hereby

Resolved that the action be sent further notice of this action to all

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Washington, D. C., October 5, 1900.

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At a special meeting of the Board of Directors of the United States Gramophone Company, held to-day, the following resolution was unanimously adopted:

It appearing to the satisfaction of the Board of Directors of this Company that the default of the Berliner Gramophone Company, for which notice of breach of contract was served upon it on August 23, 1900, was occasioned mainly by reason of an injunction awarded against it in the suit of Seaman vs. Berliner Gramophone Company, and that it has been and is at present making the most earnest and strenuous efforts to relieve itself therefrom by having it dissolved; and appearing further that the Berliner Gramophone Company, through its Counsel, has threatened and notified this Company that said notice is revoked that it will institute the necessary legal proceedings to enjoin the cancellation of its contracts; therefore be it, that it is hereby

resolved, That said notice of breach of contract be, and it is hereby is, annulled; that notice of this action of the Board be at once sent to said Berliner Gramophone Company; and that it be notified that this Company does not nor does it intend by reason to waive said breaches themselves, but as to them it reserves all its rights."

Attest:

G. NORDLINGER,
Secretary, U. S. G. Co.

Company.
D-Sts., N. Y.

September 15, 1900.

MUEL FORD,
604 Susquehanna Ave., Philadelphia.

(Copy)

Directors of the
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Sir:—I am in receipt of your letter of 15th inst. and have read it very carefully. It certainly seems to me that you are entirely correct in the view you take of this matter, and if you will call to my office in the Stephen Girard Building I should be very pleased to see you and talk with you and give you what information I can that will enable you to better understand the existing situation.

Yours truly,

BERLINER GRAMOPHONE COMPANY.

(Signed) By Thos. S. Parvin, President.

INGER.
U. S. G. Co.

Ex. C.

W. G. M.

CONSOLIDATED TALKING MACHINE
COMPANY OF AMERICA.

Philadelphia, August 1, 1900.

DEAR SIR:

I take pleasure in notifying you that the agreement between you and dated 5 June, 1900, for the sale to me of stock in the signers in the Berliner Gramophone Company (whether represented by stock certificates or by certificates of the Voting Trust of 1899) and in the United States Gramophone Company (both preferred and common) has been signed by a very large majority of the holders of the stocks of the two companies.

The Consolidated Talking Machine Company of America, a 5 per cent. 20 years Gold Collateral Trust Certificates and Common Stock (the latter to be represented by Voting Trust Certificates) to be delivered in payment for the stocks of the above two companies—has been chartered and organized as provided in the agreement.

The agreement further provides that all the certificates representing the stock held by the subscribers in the above two companies shall, on notice from me, be deposited with a Philadelphia trust company to be designated by me in exchange for deposit receipts in turn will be exchangeable for the 5 per cent. 20 years Gold Collateral Trust Certificates and Common Stock (the latter to be represented by Voting Trust Certificates) of the Consolidated Talking Machine Company of America, when ready for delivery.

I have designated as the depository for the purposes of the agreement The Fidelity Insurance, Trust and Safe Deposit Company of Philadelphia.

You are therefore requested to deposit with The Fidelity Insurance, Trust and Safe Deposit Company, 325 Chestnut Street, Philadelphia, all the certificates held by you for stock in the Berliner Gramophone Company (whether stock certificates or certificates of the Voting Trust of 1899) and in the United States Gramophone Company (both preferred and common). The Fidelity Insurance, Trust and Safe Deposit Company will issue to you its deposit receipts, as provided in the agreement.

Please note particularly (1) that all certificates deposited should be endorsed with an assignment and power of attorney for transfer, duly signed by you and witnessed, for which purpose the form printed on the backs of the certificates may be used. (2) that the assignee named in the assignment and power should be the Consolidated Talking Machine Company of America, but that the attorney to make the transfer should be left blank.

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you should also affix and cancel on the face of every certificate (in
the upper right hand corner) United States Internal Revenue stamps
at the rate of two cents for every \$100 or fraction of \$100 of stock
represented by the certificate.

As the parties in interest are numerous, kindly comply promptly
with the above requests, for prompt compliance is important to carry
out your agreement.

Very truly yours,

CHARLES ADAMSON,

119 South Fourth Street,
Philadelphia.

W. G. M. 2.

The Berliner Gramophone Company of Philadelphia, owners and
licensees of the United States patents of Emile Berliner, have con-
sulted with the United States Gramophone Company of Washing-
ton, D. C., and are immediately going to market their own product
in place of selling their goods through Frank Seaman, the National
Gram-o-phone Corporation and the Universal Talking Machine Com-
pany of New York, the reason for the change being the fact that the
last sales agents have declined to market their product exclusively,
and have been pushing a new machine and records called the Zon-o-
phone, which the Berliner Company claim is a violation of their con-
tract. Three suits have been started against the Universal Talking
Machine Company, Frank Seaman and the National Gram-o-phone
Company in the United States Courts, for infringement, damages
and accounting. The new United Gramophone Company have a
capital of two million dollars and will make an aggressive fight for
rights and the business in the United States.

CIRCUIT COURT OF THE UNITED STATES,
WESTERN DISTRICT OF VIRGINIA.

IN EQUITY.

SAMUEL FORD and WM. C. SMITH, Plaintiffs,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

CITY AND COUNTY OF PHILADELPHIA. } ss.
STATE OF PENNSYLVANIA, }

Leon F. Douglass, being duly sworn, deposes and says:

That he resides in the City of Philadelphia, State of Pennsylvania, and for a short time prior to September 1st, 1900, was in the employment of the Berliner Gramophone Company. When said Company discharged its employees, he went into the employment of Eldridge R. Johnson, a manufacturer of machines and machinery in business in Camden, N. J.; that after the suspension of business of the Berliner Gramophone Company, the said Eldridge R. Johnson became engaged on his own account in the manufacture of talking machines and talking machine records; that while in the employment of said Johnson and at the said Johnson's instance and request, deponent handed to N. W. Ayer & Son an advertisement which appeared in the October number of Scribner's magazine and one or two other magazines which advertisement appeared over the name of the Consolidated Talking Machine Company of America."

Deponent further says that said Eldridge R. Johnson when he went into the business of manufacturing talking machines and records adopted as a trade name the name "Consolidated Talking Machine Company," and through an oversight or mistake the name "Consolidated Talking Machine Company of America" was appended to the advertisement herebefore mentioned instead of the name of the Consolidated Talking Machine Company."

LEON F. DOUGLASS

Sworn and subscribed to before me this 8th day of October, 1900.

MARY F. LYONS,

(Seal.)

Notary Public

A Copy Teste.

A. K. FLETCHER,

(Seal.)

Clerk.

THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF VIRGINIA

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant

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CITY AND COUNTY OF PHILADELPHIA, } ss.
STATE OF PENNSYLVANIA.

SUB RULE TO ENLARGE INJUNCTION.

Leon F. Douglass, being duly sworn, deposes and says:

That at the instance and request of Eldridge R. Johnson, by whom at present employed, he handed to N. W. Ayer & Son an advertisement over the name of the Consolidated Talking Machine Company to be inserted in Frank Leslie's Magazine and other magazines for the month of November, 1900; that neither the Berliner Gramophone Company nor its officers or directors had anything to do with the insertions of said advertisement and had no knowledge thereof.

LEON F. DOUGLASS.

Sworn and subscribed before me this 8th day of October, 1900.

MARY F. LYONS,

Notary Public.

(Notarial Seal.)

Copy Teste.

A. K. FLETCHER,

(Seal) Clerk.

THE UNITED STATES CIRCUIT COURT, WESTERN
DISTRICT OF VIRGINIA.

IN EQUITY.

Complainant,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

AFFIDAVIT OF LEON F. DOUGLASS.

COMMONWEALTH OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILADELPHIA.

Leon F. Douglass, being duly sworn according to law, deposes and says that he is a resident of the City of Philadelphia, State of Pennsylvania, and has been connected with the Talking Machine business since 1888, having been engaged in this business for a number of years in the City of Chicago. That for a short period of time prior to November 1st, 1900, this deponent was employed by the Berliner Gramophone Company, having its office at 424 South Tenth Street,

Philadelphia, but that since that date this deponent has been employed by another party, and has been paid his salary since that date by another party, and has not received any salary since September 1900, from the Berliner Company. That as this deponent is informed and believes the Berliner Company has discharged all its employees since that date, with the exception of the watchman, and one of its office force, by reason of the injunction pending against it issued by the U. S. Circuit Court for the Western District of Virginia.

This deponent has read certain affidavits of Henry K. Smith on behalf of the complainants in this cause, and denies that he was General Manager of the said Berliner Gramophone Company as alleged by the said Smith in one of his affidavits, and that the said Smith had knowledge that this deponent was not the General Manager of the said Company; that on one occasion the said Smith handed this deponent a letter written on the letter sheets of the Berliner Gramophone Company to sign as General Manager, that this deponent then and at that time distinctly informed the said Smith that he was not General Manager, and instructed him to have the letter rewritten, which the said Smith did. This deponent further states that while in the employ of the Berliner Gramophone Company he never placed any advertising for any other Talking Machine Company nor arranged for the same with N. W. Ayres & Sons.

This deponent further avers that even during his short connection with the Berliner Gramophone Company that influences from various sources were brought to bear upon Mr. Thomas S. Parvin, President of the Company, to discharge the said Henry K. Smith hereinafter referred to, from the employ of the Company, on account of his unreliability and incompetency due to excessive drinking, but that said Parvin repeatedly stated that he knew these facts but that he desired to give him further opportunity to do better from time to time, as he disliked very much to discharge the man who had been dependent upon the salary which he was receiving from the Berliner Gramophone Company, and that he thought that he could induce him to reform; all of which efforts appear to have been futile.

And further this deponent saith not.

(Sgd.) LEON F. DOUGLAS

Sworn to and subscribed before me this sixth day of October, A. D. 1900.

(Sgd.)

CHARLES H. SPECKMAN

(Seal.)

Notary Public

A Copy Teste.

A. K. FLETCHER,

(Seal.)

Clerk.

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ber 24, 1900, and said Douglass had no authority whatsoever to procure to be done said advertising or any other advertising.

3. Most all advertising matter, including slips such as that to one of plaintiff's exhibits and catalogues, was prepared and kept in the possession of the said Berliner Gramophone Company as stated in previous affidavits, ready for use and distribution if the injunction order of June 25, 1900, should be dissolved, not to be used otherwise, and none of said advertising matter has been used except there was sent to Ellis & Co. of Washington a limited number of Catalogues and Slips for use in the City of Columbia, and deponent says that the Catalogue and Slips accompanying or exhibited with plaintiff's affidavits were either given to Ellis & Co. or some one who had obtained them from there, and if any other advertising appears in any way it was without the knowledge or authority of the Berliner Company or any one of its officers or directors.

THOS. S. PARSONS

Sworn and subscribed to before me this 8th day of October

MARY F. LYONS

(Seal.)

Notary Public

A Copy Teste.

A. K. FLETCHER,

(Seal.)

Clerk.

CAMDEN COUNTY,
STATE OF NEW JERSEY.

Norman Gray, being duly sworn deposes and says, that he is President of the Consolidated Talking Machine Company, and that the said company has never transacted any business, and has never authorized any one to transact business for it, and has never authorized the use of its name in any business or advertising.

-NORMAN GRAY

Sworn and subscribed to before me this 28th day of September, A. D. 1900.

HENRY L. CHASE

(Seal.)

Notary Public

A Copy Teste.

A. K. FLETCHER,

Clerk.

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UNITED STATES CIRCUIT COURT, WESTERN DISTRICT
OF VIRGINIA.

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

STATE OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILA. }

Henry K. Smith, being duly sworn, deposes: That he is and has been for many years, intimately connected with the management of the Berliner Gramophone Company, the defendant in the above entitled action, and has during that time occupied the position of book-keeper and cashier, etc.

That he knows of the contents of the proposed advertisements which have been ordered to be inserted in several publications and magazines and which advertisements relate to Gramophones and Gramophone Records, the said advertisements being put out in the name of the Consolidated Talking Machine Company of America, with its principal headquarters at No. 120 North Front Street, Camden, New Jersey.

That the aforesaid advertisements were placed with N. W. Ayer & Son, advertising agents, having their offices in the City of Philadelphia and State of Pennsylvania.

That they were so placed by one Leon F. Douglass, an employee of the Berliner Gramophone Company, and known by the deponent as the General Manager of said Company, having paid his salary as General Manager as per instructions of the President, Thomas Grammer, in which the books of the Berliner Gramophone Company

some question arose on the part of the said N. W. Ayer & Son as to the credit of the aforesaid Consolidated Talking Machine Company of America after the advertisement had been placed with said publication.

That within one month last past said Douglass directed the deponent by telephone the office of the aforesaid N. W. Ayer & Son, and caused to have said connection established, whereupon the said Douglass telephoned to the said office of N. W. Ayer & Son, saying substantially as follows: "In reference to the advertise-

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Notary Public.

ment of the Consolidated Talking Machine Company of America placed with you to-day I refer you as to credit to Mr. Joseph Smith, No. 434 Market street, Philadelphia."

Deponent says that the aforesaid Joseph Goldsmithers and been known to him for years as the Vice-President of the Berliner Gramophone Company, and is the acting executive officer of the Berliner Gramophone Company in the absence of its president and so acted from time to time during such absences.

That the location, No. 120 North Front Street, Camden, New Jersey, as given in the aforesaid advertisement, is the factory of Eldridge R. Johnson, who has manufactured for the Berliner Gramophone Company upon order of Frank Seaman thousands of sound boxes and machine parts employed and used in the machine known as the "Gramophone."

(Signed) HENRY K. SMITH

Subscribed and sworn to before me this 24th day of September 1900.

WILLIAM POWERS, Notary Public.

(Notary Seal.)

A Copy Teste,

A. F. FLETCHER,

(Seal)

Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES
THE WESTERN DISTRICT OF VIRGINIA

IN EQUITY.

FRANK SEAMAN,

vs.

THE BERLINER GRAMOPHONE COMPANY

Henry K. Smith, being duly sworn, deposes: That he for several years the bookkeeper, cashier, etc., of the Berliner Gramophone Company, the defendant in this action.

That as such he became acquainted within one month with Mr. Shaw, introduced to the deponent by Mr. Leonard known to the deponent as the General Manager of the Berliner Gramophone Company, the said Mr. Douglass informing the deponent

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he had succeeded in procuring the services of Mr. Shaw, and asked the deponent if he had heard the same. Giving said Douglass an evasive answer he said to the deponent that he had hard work getting him from the Gramophone people, but was a very valuable man.

On the 13th day of September, 1900, the said Shaw, in conversation with the deponent stated that he was then leaving for Washington, D. C., and would expect to see me, the deponent, in about two weeks. This conversation arose from the fact that all the employees, including the deponent, excepting Leon F. Douglass and said Shaw, had been laid off until a decision was rendered in a suit at law between Frank Seaman and the Berliner Gramophone Company.

The duties of the deponent in the position in which he held, required him to remain three days longer than the balance of the employees of the Berliner Gramophone Company, and in that interim shipment of sundry articles consisting of Gramophone Records, printed and advertising matter, etc., or relating to Gramophones and Gramophone goods, was made to persons, as per said Shaw's instructions to Washington, D. C.

HENRY K. SMITH.

Subscribed and sworn to before me this 24th day of September,

WM. POWERS,
Notary Public.

UNITED STATES CIRCUIT COURT, WESTERN DISTRICT
OF VIRGINIA.

IN EQUITY.

FRANK SEAMAN, Plaintiff.

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

STATE OF NEW YORK, }
Said County of New York, } ss.

Henry K. Smith, being duly sworn, deposes that he is a resident of the City of Philadelphia, Pennsylvania, having been for a number of years connected with the Berliner Gramophone Company, of which S. Parvin is President, occupying during that time the position of bookkeeper of said company;

that he is thoroughly familiar with the method in which the business of the said Berliner Gramophone Company has been conducted, and its business policy;

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THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF VIRGINIA.

IN EQUITY.

FRANK SEAMAN,

v.

THE BERLINER GRAMOPHONE COMPANY.

Henry K. Smith, being duly sworn, deposes: That he resides in the City of Philadelphia, and State of Pennsylvania, and has for upwards of five years last past been in the employ of the Berliner Gramophone Company, the defendant herein; that in the course of his said employment he has acted as accountant for said Company, and has charge of the books of the same, and has been familiar with the business of said Company, its receipts and expenditures.

That at the time of the execution of the contract with Frank Seaman, the complainant herein, in October, 1896, the business of said Company was comparatively small. That when orders for goods under said contract began to be received from the complainant hereunder for spring motors, the greater number thereof were filled through the manufacture of motors and parts thereof by one Eldridge Johnson, who took contracts therefor, and that such motors and parts were combined into Gramophones, and delivered to the Company by The Berliner Gramophone Company.

That upon the machines so made and furnished were placed by the defendant, The Berliner Gramophone Company, the following: "Berliner Gramophone, Patents, etc., National Gramophone Company, 874 Broadway, New York City;" and that goods, so marked, were shipped upon orders of Mr. Frank Seaman, that such shipments were made from time to time. That when Seaman first began delivering under said contract, there was nothing but what was termed a "Hand Gramophone." The first spring machine was built upon a model furnished by a Mr. Montrose, Camden, New Jersey, which model, Mr. Seaman adopted and gave an order for the same, which order was filled by defendant. That for these motors was turned over by the said Montrose to Eldridge R. Johnson, who built the machines. After the said machines were built under said order, a controversy arose between the said Montrose and the said Johnson, and Johnson made a model of his own.

That after said Johnson continued to build machines upon his said model, which was adopted by the Complainant in giving his orders, and as the one which was to be followed by defendant.

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When Mr. Johnson began building machines questions of patents arose as to improvements which were to be made, and an arrangement was made between said Johnson and the defendant that all patents should be kept in the name of Johnson, and not assigned to the defendant. The reason for this arrangement was, as the same was discussed at the time, that in case the Berliner Company should own patents, the Complainant would have the right to go into the market for motors, whereas if Johnson took out the patents in his own name, it would be impossible for the complainant to get machines excepting through him, Johnson, it being the policy of the Company to prevent competition in manufacturing motors and other goods, and to hold the process without competition. Such policy has been carried out down to the present time. As improvements in models were made from time to time, complainant paid for changes of machines required in the factory of said Johnson to manufacture the improved form. All models submitted by the complainant for different purposes were invariably placed in the hands of Johnson for examination, and said Johnson passed upon the same.

That about three years ago the defendant made an arrangement with said Johnson to improve its method of taking and making records, and pursuant thereto The Berliner Company commenced to pay out monthly large sums of money upon the account of experimental work so conducted by said Johnson, as per bills rendered, making in that way the entire expenses of such work, and in that manner expended in the neighborhood of five thousand dollars, together with about three thousand dollars in addition for machinery purchased for the use in such work.

That said Johnson constantly reported progress, and when, over a year ago, practical results began to be accomplished, said Johnson negotiated for the defendant a sale of its foreign rights in the aforesaid processes of taking and making records to the Gramophone Company of London, Limited, of which William Barry Owen is Managing Director, for the sum of fifteen thousand dollars; that on such said sale Johnson received a commission of five thousand dollars and the Berliner Company made a net profit of about twenty hundred dollars as shown by their books, after paying the expenses of said experiments, and besides retaining for the United States the full rights in the patents, inventions, discoveries, and processes worked out.

That after such time, and down to the present time, the defendant has continued to conduct such experiments, and to produce Records and Matrices at the factory of said Johnson, using for that purpose machinery and appliances so bought by it, a part of which is now in the factory of said Johnson at Camden, in the State of New Jersey, and a part of which was until recently in the factory of the defendant

at Philadelphia plants.

Before the trial with Berliner the plaintiff paid all rights through the Berliner.

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questions of patents and an arrangement that all patents assigned to the defendant as the same was discovered should own the right to go into the open market at the patents in his hands to get machines in policy of the Company and other goods, and policy has been carried out in model were changes of machinery to manufacture the improved for different motors for examination and

made an arrangement taking and making company commenced to the account of experimental bills rendered, meet, and in that manner dollars, together with machinery purchased for

ss, and when, a little accomplished, said John foreign rights in the s to the Gramophone Barry Owen is Man dollars; that up five thousand dollars f about twenty-seve paying the expense e United States their ies, and processes s

time, the defendant l to produce Records ing for that purpose t of which is now in State of New Jersey tory of the defendant

at Philadelphia—the two parts referred to being practically duplicate plants.

Before these experiments were begun, and expenses made, a resolution was passed by the Board of Directors of the defendant, the Berliner Gramophone Company, authorizing their prosecution, and the payment by the Company for the same, upon the condition that all rights, inventions and discoveries made in or about, or obtained through such expenditures, should belong to and be the property of the Berliner Gramophone Company.

That the Berliner Gramophone Company have paid, as well as the expenses for experimenting with machinery, processes, etc., all patent fees and attorneys' fees upon the obtaining of patents for inventions and improvements made in connection with such investigation and enterprise.

That about a year ago the Berliner Gramophone Company moved from the factory of Eldridge R. Johnson, in Camden, New Jersey, certain machinery and other appliances connected with the making of Records under the new process which had been developed as above stated, and which is termed the "Johnson process." Experimental work was done with such machinery at the factory of The Berliner Gramophone Company, at 424 South Tenth Street, Philadelphia, the rent of which factory was paid for by Mr. Frank Seaman, the plaintiff, as per bills rendered to him; and experimental Records were made at the above named factory of The Berliner Gramophone Company. These experiments did not prove entirely satisfactory, and a portion of the machinery above described, and which had been paid for by The Berliner Gramophone Company, together with the employees in the Record making department of the Berliner Gramophone Company, were sent to Camden, and to the factory of the Eldridge R. Johnson, since which time all experimental work and efforts thereunder to make the said process of commercial value, have been conducted at the said Eldridge R. Johnson's factory in Camden, New Jersey, The Berliner Gramophone Company paying the expenses of the same on bills rendered by the said Eldridge R. Johnson, and The Berliner Gramophone Company also paying the monthly pay-roll for wages in connection therewith.

That about the first of July, 1900, the laboratory of the Berliner Gramophone Company, at 424 South Tenth Street, was closed and the gentleman in charge of said laboratory was sent to the laboratory of the aforesaid Eldridge R. Johnson, but he continued to be employ of and on the pay-roll of the Berliner Gramophone Company. From that time to the present date, to the best of the knowledge and belief of the deponent, various talent has been employed from time to time and matrices made at the Camden laboratory, the products amounting in number to some two hundred matrices

and the deponent of his own knowledge states that one-half of the expenses of making the aforesaid matrices have been charged to the defendants, the Berliner Gramophone Company, and one-half of the expenses have been charged by said Eldridge R. Johnson to the Gramophone Company of London. The charge to said London Company was made for the reason said company was privileged to use the benefit of all experiments made at the said Camden factory for their own use abroad, said arrangement having been a part of an agreement when the foreign rights to the process itself were given to the London Gramophone Company by the Berliner Gramophone Company.

From the matrices above referred to some three thousand records have been pressed and the same are now in the stock of the defendant company at its factory at Philadelphia.

That in May last the defendant placed with the said Eldridge R. Johnson an order for twenty-five hundred Gramophones, complete with the exception of sound boxes, horns and elbows. The sound boxes were not ordered of Johnson for the reason that the Berliner Gramophone Company had in its possession at the time twenty-five hundred sound boxes which had not been delivered upon the last order of the complainant for five thousand sound boxes, it being the policy of the Berliner Gramophone Company to use the said twenty-five hundred boxes on the machines ordered as above.

That from said lot of twenty-five hundred Gram-o-phones, twenty-five hundred had been delivered prior to the middle of August about eighteen hundred Gram-o-phones and that at about the time stated the delivery of the remainder of Gram-o-phones due was ordered delayed by Thomas S. Parvin, President of the defendant Company, under further instructions.

That for upwards of three years last passed the cancellation of the contract between the complainant and the defendant in the above entitled action has been a matter of frequent discussion among the officers and directors of the defendant company and it has been the settled policy of the management of said defendant corporation upwards of the year last passed to cancel said contract upon any pretext that could be found in order to gain for the defendant company the benefit of the entire retail business in Gramophone Gram-o-phone goods and that towards the cancellation of said contract Eldridge R. Johnson was constantly lending his influence and the making of reports regarding interviews with the complainant and others.

HENRY K. S.

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Sworn to and subscribed before me this 19th day of September, 1900.

(Seal.)
 EMIL T. FUESS,
Notary Public.
 No. 69 New York Co., N. Y.

A Copy Teste.

A. K. FLETCHER,
Clerk.

(Seal.)

UNITED STATES CIRCUIT COURT, WESTERN DISTRICT
 OF VIRGINIA.

ON MOTION TO APPOINT A RECEIVER.

SAMUEL FORD, etc., Plaintiff.

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

STATE OF NEW YORK, } ss.
 AND COUNTY OF NEW YORK.

Henry K. Smith, being duly sworn deposes, that he has been for many years the bookkeeper of the Berliner Gramophone Company in the City of Philadelphia, and by reason of such position is thoroughly familiar with the financial condition of the said company.

That the said company was indebted to the extent of fifteen or twenty thousand dollars (\$15,000 or \$20,000) at the time the contract with Frank Seaman was made, and was without financial means to meet its obligations.

That since the contract was made with the said Frank Seaman, The Berliner Gramophone Company has been enabled to pay off the indebtedness above named, pay officers' salaries, together with dividends amounting to the sum of four per cent. per annum.

That the assets of the Berliner Gramophone Company consist of contracts with the United States Gramophone Company, under which it was entitled to certain rights in the Berliner patents, as well as the experimental plant and patents, rights and processes to what is called the Johnson process of record-making, fixtures and machinery, the book value of the said fixtures and machinery being \$5,500.00, the market value of which at present is problematical.

HENRY K. SMITH.

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RY K. SMITH

Sworn to before me this 27th day of September, 1900.

EMIL F. FUESS

(Seal.)

No. 69 New York Co.,

A Copy Teste.

A. K. FLETCHER,

Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES
THE WESTERN DISTRICT OF VIRGINIA

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

AFFIDAVIT OF JOSEPH GOLDSMITH, SUR-RULE TO
LARGE INJUNCTION.

CITY AND COUNTY OF PHILADELPHIA, } ss.
STATE OF PENNSYLVANIA.

Joseph Goldsmith being duly sworn, deposes and says:

That he is the Vice-President of the Berliner Gramophone Company and one of its Directors, that since the injunction in this case was granted on June 25th, 1900, it has been the avowed purpose and intention of all of the Officers and Directors of the Berliner Gramophone Company to implicitly obey the said injunction.

Deponent further says that since the injunction was granted in this case the Berliner Gramophone Company has not given, nor has it promised to give away or authorized or empowered any person or corporation to give away or promise to give away any Gramophone Goods or Records, nor has the Berliner Gramophone Company advertised or authorized any one else to advertise that Gramophones, Gramophone Goods or Records would be given away or sold or disposed of in any way.

Deponent further states that he has read the affidavits of S. Parvin, Max H. Biernbaum, Wm. J. Armstrong and T. Latta filed under this rule, and the facts therein stated are true to the best of his knowledge and belief.

JOSEPH GOLDSMITH

Sworn at
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(Notarial)

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L. F. FUESS,
Notary Public.
York Co., N. Y.

Sworn and subscribed to before me this 27th day of September,
1900.

T. A. FENSTERMAKER,

(Notarial Seal.)

Notary Public.

A Copy Teste.

A. K. FLETCHER,

Clerk.

(Seal.)

(Seal.)

ED STATES FOR
IRGINIA.

CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA.

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

NY, Defendant.

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AFFIDAVIT OF MAX H. BIERNBAUM SUR-RULE TO EN-
LARGE INJUNCTION.

AND COUNTY OF PHILADELPHIA, } ss.
STATE OF PENNSYLVANIA.

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Max H. Biernbaum, being duly sworn, deposes and says: That
Secretary of the Berliner Gramophone Company. That since
injunction was granted in this case on June 25th, 1900, the
Berliner Gramophone Company has sold and delivered to John F.
Co., in the District of Columbia, and to no one else in the
District of Columbia, Gramophones or Gramophone Goods ag-
ing in value about four hundred dollars (\$400.00).

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ponent further says that since the injunction was granted in
the Berliner Gramophone Company has not given away
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corporation to give away or promise to give away any Gramo-
Gramophone Goods or Records; nor has the said Berliner
phone Company advertised or authorized any advertisement
to give away any Gramophones, Gramophone Goods or

EPH GOLDSMITH

ponent has read the affidavit of Thomas S. Parvin made this
rule to enlarge injunction, and states that all the facts therein
are true.

MAX H. BIERNBAUM.

Sworn and subscribed to before me this 25th day of September
1900.

T. A. FENSTERMAKER

Notary Public

(Seal of Notary Public.)

A Copy Teste.

A. K. FLETCHER,

Clerk.

CIRCUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

AFFIDAVIT OF WM. J. ARMSTRONG SUR-RULE TO
LARGE INJUNCTION.

CITY AND COUNTY OF PHILADELPHIA, } ss.
STATE OF PENNSYLVANIA.

Wm. J. Armstrong, being duly sworn, deposes and says:

That he is Treasurer and a Director of the Berliner Gramophone Company. That since the preliminary injunction was granted in case on June 25th, 1900, the Berliner Gramophone Company sold no Gramophones, Gramophone Goods or Records in the District of Columbia, except about four hundred dollars (\$400.00) of Gramophones, Gramophone Goods and Records to John & Co.

Deponent further says that the Berliner Gramophone Company has not given away any Gramophones, Gramophone Goods or Records since the granting of this injunction, nor has it authorized any person, firm or corporation to give away or promise to give away Gramophones, Gramophone Goods or Records or authorized any advertisement of such character.

Deponent further says that it has been the intention of the Plaintiff and Directors of the Berliner Gramophone Company to obey

completely and implicitly the injunction order granted on June 25th, 1900, and to deponent's certain knowledge the said injunction has been obeyed.

Deponent has read the affidavit of Thomas S. Parvin made this day in rule to enlarge injunction, and states that all the facts therein set forth are true.

WM. J. ARMSTRONG.

Sworn and subscribed to before me this 25th day of September, 1900.

T. A. FENSTERMAKER,

(Seal of Notary Public.)

Notary Public.

A Copy Teste.

A. K. FLETCHER,

Clerk.

(Seal.)

REQUIT COURT OF THE UNITED STATES FOR THE
WESTERN DISTRICT OF VIRGINIA.

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

AFFIDAVIT OF THOMAS L. LATTA SUR-RULE TO EN-
LARGE INJUNCTION.

CITY AND COUNTY OF PHILADELPHIA, } ss.
STATE OF PENNSYLVANIA.

Thomas L. Latta, being duly sworn, deposes and says:

That he is a Director of the Berliner Gramophone Company; that the Berliner Gramophone Company has never authorized any sales of Gramophones or Gramophone Goods which would in any way violate the injunction granted on June 25th, 1900; neither has the Berliner Gramophone Company authorized any one to give away or dispose to any person, firm or corporation, nor has it authorized any person to give away any Gramophones, Gramophone Goods or Records to any person, firm or corporation whatever.

Deponent further says that he has read the affidavit of Thomas Parvin made this day to be filed under this rule and that the facts stated therein are true to the best of his knowledge and belief.

THOS. L. LATT

Sworn and subscribed to before me this 25th day of September 1900.

T. A. FENSTERMAKER

Notary Public

(Seal.)

A Copy Teste.

A. K. FLETCHER,

Clerk.

CIRCUIT COURT OF THE UNITED STATES FOR
WESTERN DISTRICT OF VIRGINIA

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

AFFIDAVIT OF WILLIAM S. LLOYD SUR-RULE TO
LARGE INJUNCTION.

CITY AND COUNTY OF PHILADELPHIA, } ss.
STATE OF PENNSYLVANIA,

William S. Lloyd, being duly sworn, deposes and says:

That he is a Director of the Berliner Gramophone Company and he has read the affidavits of Thomas S. Parvin, Max H. Bierman, Wm. J. Armstrong, and Thos. L. Latta, and the facts therein are true to the best of his knowledge and belief.

WILLIAM S. LLOYD

Sworn and subscribed to before me this 25th day of September 1900.

T. A. FENSTERMAKER

Notary Public

(Seal of Notary Public.)

A Copy Teste.

A. K. FLETCHER,

Clerk.

CITY OF WASHINGTON, }
DISTRICT OF COLUMBIA. } ss.

Before me, a Notary Public, in and for the City and District afore-
said, this day appeared Robert C. Rogers, being personally well known
to me, who being duly sworn deposes and says, that he is the book-
keeper for John F. Ellis & Co., conducting the music business at 937
Pennsylvania Avenue, in said City of Washington, D. C., selling music,
books and musical instruments of various kinds, among the
other the Berliner Gramophone; that the said John F. Ellis & Co.
have been purchasing Gramophones and Gramophone Supplies from
the Berliner Gramophone Co., of Philadelphia, Penna., since June,
1900; that the said Berliner Gramophone Co. of Philadelphia, Penna.,
informed the said John F. Ellis & Co. that they, the said Berliner
Gramophone Co., until a suit is decided in their favor, could only sell
Berliner Gramophone and Supplies in the District of Columbia;
that the said John F. Ellis & Co. were never appointed as Agents or
an Agency by the Berliner Gramophone Co. for the sale of
Gramophones and Supplies in the District of Columbia; and
any letters written offering wholesale rates inside or outside the
District of Columbia by the said John F. Ellis & Co. were sent by
John F. Ellis & Co. on their own responsibility; and that the
relations existing between said John F. Ellis & Co. and said Berliner
Gramophone Co. are those of buyer and seller, and none other; and
the position of said Robert C. Rogers as bookkeeper for John F.
& Co. is such that if it were otherwise he would know it.

ROBERT C. ROGERS.

Subscribed and sworn to before me this 4th day of October, 1900.

CHARLES B. BAYLY,
Notary Public.

A Copy Teste,
A. F. FLETCHER,
Clerk.

DISTRICT OF COLUMBIA, }
CITY OF WASHINGTON. } ss.

Before me, a Notary Public in and for the District and City afore-
said, this day appeared Charles B. Bayley, being personally well
known to me, who being duly sworn deposes and says, that he is the
bookkeeper for John F. Ellis & Co., conducting the music business at

937 Pennsylvania avenue, in said City of Washington, D. C., selling music, music books and musical instruments of various kinds, among the latter being the Berliner Gramophone; that on the 26th day of September, 1900, a party giving his name as S. D. Campbell applied for wholesale rates on the Berliner Gramophone, stating that he was acting for a party in Richmond, Virginia, who was engaged in selling Novelties and who wanted to buy Gramophones to sell in connection with Graphophones, and whose address he gave as E. M. Crutchfield, Richmond, Va.; and the said Charles B. Bayly further stated that wholesale rates were offered to said E. M. Crutchfield by John F. Ellis & Co., on Berliner Gramophones and Records, but that no representation was made to either the party representing himself as S. D. Campbell or E. M. Crutchfield, of Richmond, Va., that John F. Ellis & Co. was a wholesale agent, or an agent of any kind, or that the said John F. Ellis & Co. was acting by authority of the Berliner Gramophone Co., of Philadelphia, Pa.; and the said Charles B. Bayly further states that the said John F. Ellis & Co. never claimed at any time to anyone that they were the agents, wholesale or otherwise, of said Berliner Gramophone Co., of Philadelphia, Pa.; that in all transactions they, the said John F. Ellis & Co. acted on their own responsibility.

CHARLES B. BAYLY, Jr.

Subscribed and sworn to before me this 5th day of October, 1900.

JNO. C. ARTHUR,

Notary Public in and for the District of Columbia.

(Seal)

A Copy Teste,

A. K. LETCHER,

(Seal)

Clerk.

DISTRICT OF COLUMBIA, } ss.
CITY OF WASHINGTON. }

Before me, a Notary Public in and for the District and City of Columbia, said, this day appeared Charles B. Bayly, Jr., who being duly sworn, deposes and says, that he is employed by John F. Ellis & Co., 937 Pennsylvania avenue, Washington, D. C., and is the son of Charles B. Bayly, manager for said John F. Ellis & Co.; and that he is in charge of the Gramophone Department of the business of said John F. Ellis & Co.; that on the 26th day of September, 1900, he was approached by Reeve Lewis, who purchased a Gramophone from him at the store of said John F. Ellis & Co. on said date.

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engaged him, Charles B. Bayly, Jr., in conversation regarding Gramophones; that in answer to questions of said Reeve Lewis, he stated that the Berliner Gramophone Co. had not given to said John F. Ellis & Co. permission to sell Gramophones outside of the District of Columbia, and that they would not give such permission if asked. He further stated that the Gramophones and Records bought by John F. Ellis & Co., being their property and a part of their stock in trade, Charles B. Bayly, Jr., did not see how anyone could prevent said John F. Ellis & Co. from selling same to whom they pleased, nor were they pleased, or words to that effect.

CHAS. B. BAYLY, JR.,

Subscribed and sworn to before me this 5th day of October, 1900.

A. B. KELLY,
Notary Public.

(Seal)

A Copy Teste,

A. K. LLETCHER,

(Seal)

Clerk.

THE CIRCUIT COURT OF THE UNITED STATES FOR
THE WESTERN DISTRICT OF VIRGINIA.

IN EQUITY.

FRANK SEAMAN, Plaintiff,

vs.

BERLINER GRAMOPHONE COMPANY, Defendant.

CAVIT OF THOMAS S. PARVIN SUR-RULE TO EN-
LARGE INJUNCTION.

AND-COUNTY OF PHILADELPHIA, } ss.
STATE OF PENNSYLVANIA,

Thomas S. Parvin, being duly sworn, deposes and says: That he is President of the Berliner Gramophone Company. Since the decision in this case was granted, on June 25, 1900, the Berliner Gramophone Company sold and delivered to John F. Ellis & Co., Washington, D. C., 16 Gramophone Machines, 826 Records and

Gramophone Goods to the amount of \$46.57, aggregating about one hundred dollars (\$400.00). With the exception of these sales to F. Ellis & Co., no other sales of Gramophones or Gramophone goods or Records have been made in the District of Columbia. In the fourth paragraph of the contract of October 10, 1896, it is provided as follows: "The Licensor hereby grants to the Licensee the exclusive License to buy, sell and deal in throughout the United States and America (except in the District of Columbia), Gramophones, Gramophone goods embodying the said inventions, and all improvements therein, etc."

Deponent is advised and therefore avers that under the quoted clause of the contract of October 10, 1896, the Berliner Gramophone Company had a right to sell in the District of Columbia a quantity of Gramophones and Gramophone goods and Records which it did sell as aforesaid, and that there is nothing in the injunction which prevented them from selling the aforesaid quantity of Gramophones and Gramophone goods.

Deponent further says that on September 11, 1900, on the following the argument of the motion to dissolve the preliminary injunction, the Board of Directors of the Berliner Gramophone Company had their regular monthly meeting, and adopted the resolution to the effect that all the employees of the Berliner Gramophone Company should be discharged except such as were necessary to produce the Gramophones and Gramophone goods stored in the Company's factory. In pursuance of said resolution, all of the employees were dismissed except one clerk and a watchman, and one salesman whom the Company desired to send to Washington to try and induce F. Ellis & Co. to use more efforts to sell more goods in the District of Columbia for use therein than had previously been sold.

With the exception of the goods sold and delivered in the District of Columbia as aforesaid, and 4 or 5 Gramophone Machines and a few Records sold and delivered to individual officers or stockholders of the Berliner Gramophone Company, for their own personal use, no Gramophones or Gramophone goods which were in the said factory or delivered to them afterwards have ever been sold, given away or disposed of in any way to any person whatever. All of the Gramophones and Gramophone goods owned by the Berliner Gramophone Company at the time of the issuing of the injunction in this case, and received thereafter were stored in the said factory, which is situated at the northeast corner of 10th and Lombard streets, in the City of Philadelphia, and all said goods are there at present.

Deponent further says that the Berliner Gramophone Company has not directly or indirectly given away, agreed or promised to give away or authorized any person, firm or corporation whatever to give away or promise or agree to give away any Gramophones or Gramophone goods, which it, the said Berliner Gramophone Company, can

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tracted to sell and deliver to Frank Seaman. Neither has the said Berliner Gramophone Company advertised nor caused to be advertised nor authorized any person, firm or corporation whatever to advertise that it will give away Gramophones or Gramophone goods of any kind or description whatever. If any person, firm or corporation is advertising to give away or to sell Gramophones or Gramophone goods or Records to the public generally or to persons, firms or corporations to whom the said Frank Seaman has sold Gramophones and Gramophone goods, such advertising is without any license or authority whatever from the Berliner Gramophone Company, its Directors or Officers.

Deponent further says that it has been the intention of the Berliner Gramophone Company, its Directors and Officers, fairly, fully and implicitly to obey the preliminary injunction issued by this Honorable Court on June 25, 1900.

THOS. S. PARVIN.

Sworn and subscribed to before me this 25th day of September, 1900.

T. A. FENSTERMAKER,

Notary Public.

(Seal of Notary Public.)

A Copy Teste,

A. K. LETCHER,

(Seal)

Clerk.

W. G. M. 6.

(10 cent Internal Revenue Stamp Cancelled.)

CERTIFICATE OF INCORPORATION

OF

CONSOLIDATED TALKING MACHINE COMPANY OF
AMERICA.

Registered Office with
The Corporations' Company,
Camden, New Jersey.

This is to certify, That we, the undersigned, do hereby associate ourselves into a corporation pursuant to the provisions of an Act of Legislature of the State of New Jersey, entitled "An Act Con-

cerning Corporations, Revision of 1896," and the various acts amendatory thereof and supplemental thereto, for the purpose, and in furtherance and not in limitation of the general powers conferred by the laws of the State of New Jersey with the powers, hereinbefore mentioned, and to that end we do by this our certificate set forth:

First. That the name assumed to designate the corporation to be used in its business and dealings is

CONSOLIDATED TALKING MACHINE COMPANY OF AMERICA.

Second. That the principal office in this State is to be located in Camden, in the County of Camden, and the business of the corporation is to be conducted therein, and in such other places in the State as the nature and progress of the business of the corporation from time to time render necessary or desirable.

The corporation shall also have power to conduct its business in its branches, and have one or more offices and unlimitedly to purchase, mortgage and convey real and personal property in the State of New Jersey, in any or all of the several States and Territories of the United States, and in the District of Columbia, and any or all Foreign Countries, and in Colonial possessions and territorial acquisitions of the United States.

The location of the principal office in New Jersey is No. 127 Main street, Camden, and the name of the agent therein and in each thereof, and upon whom process may be served is **THE CORPORATIONS' COMPANY.**

Third. That the objects for which this corporation is formed is to do any or all of the things herein set forth to the same extent as natural persons might or could do, and in any part of the world, principals, agents, or otherwise, viz:

To manufacture, buy and otherwise acquire, to own, store, operate, and to rent, sell, deal in and distribute, all kinds of records of sound, all kinds of machinery, equipment and tools for making and recording sound, all kinds of machines, instruments and appliances for reproducing, transmitting and uttering sound, and all kinds of mechanical and other devices, and materials and supplies useful or convenient in recording, reproducing, transmitting and uttering sound, and in storing, using, operating, renting, selling, dealing in and distributing the aforesaid records, machinery, equipment, tools, machines, instruments and appliances;

To acquire, by purchase, lease or otherwise, to own, hold and operate, and to dispose of by sale, lease, or otherwise, laboratories for experimental purposes in recording, reproducing, transmitting and uttering sound, and plants and other facilities of all kinds for manufacturing, storing, using, operating, renting, selling, dealing in and distributing

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tributing the aforesaid records, machinery, equipment, tools, machines, instruments, appliances, devices, materials and supplies;

To manufacture, purchase, or otherwise acquire, hold, own, mortgage, sell, assign and transfer, invest, trade, deal in and deal with goods, wares, and merchandise, and property of every class and description;

To borrow money, to make and issue promissory notes, bills of exchange, bonds, debentures and evidences of indebtedness of all kinds, whether secured by mortgage, pledge or otherwise, without limit as to amount, and to secure the same by mortgage, pledge or otherwise;

To procure the corporation to be registered or recognized to have one or more offices, to carry on all or any of its operations and business, and unlimitedly and without restriction to hold, purchase, mortgage, and convey real and personal property in any state or territory of the United States, and in any foreign country or place.

To do all and everything necessary, suitable or proper for the accomplishment of any of the purposes or attainment of any of the objects hereinbefore and hereinafter enumerated, which shall at any time appear for the benefit of the corporation, and in general to carry on any other business (whether manufacturing or otherwise) which may seem to the corporation capable of being conveniently carried on in connection with the above, or calculated directly or indirectly to enhance the value of or render profitable any of the corporation's property or rights.

To apply for, obtain, register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce and sell, assign or otherwise dispose of, any and all trademarks, formulae, secret processes, trade names and distinctive marks, and all inventions, improvements and processes used in connection with or secured under letters patent or otherwise, of the United States or of any other country; and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any and all such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information acquired, and, with a view to the working and development of the same, to carry on any business, whether manufacturing, or otherwise, which the corporation may think calculated directly or indirectly to promote these objects;

To enter into, make, perform, and carry out contracts of every sort and kind, with any person, firm, association, corporation, private, public, municipal, or body politic, and with the government of the United States, or any State, territory or colony thereof, or any foreign government; to purchase, lease, exchange, hire or otherwise acquire, and all rights, privileges, permits, or franchises suitable or convenient for any of the purposes of its business.

To hold, purchase or otherwise acquire, to sell, assign, transfer,

mortgage, pledge or otherwise dispose of the shares of the capital stock of and any bonds, debentures or other evidence of indebtedness created by any other corporation or corporations, and, while the holder thereof, to exercise all the rights, powers and privileges of ownership, including the right to vote thereon.

To guarantee the payment of dividends or interest on any shares, stock, debentures or other securities issued by or any other corporation or obligation of, any corporation whenever proper or necessary in the business of the corporation in the judgment of its directors, provided the required authority be first obtained from the majority of directors for that purpose.

To cause or allow the legal title, estate and interest in any property acquired, established, or carried on by the company to remain invested, or registered in the name of, or carried on by any other company or companies, foreign or domestic, formed or to be formed, either upon trust for, or as agents or nominees of this Company, or upon any other terms or conditions which the board of directors may consider for the benefit of this Company, and to manage the affairs, or take over and carry on the business of such Company or Companies so formed or to be formed, either by acquiring the shares, stocks, or other securities thereof, or otherwise, howsoever, and exercise all or any of the powers of holders of shares, stocks, securities of such corporations and to receive and distribute as profits the dividends and interest on such shares, stock, or securities.

The corporation shall have the power to merge and consolidate with any one or more corporations, whether organized or to be organized under the laws of New Jersey or elsewhere, for the purpose of carrying on any kind of business of the same or a similar nature to that in which this corporation is authorized to conduct, which consolidated Company may be any one of said merging corporations, or a new company or be formed by means of such consolidation.

Fourth. The total authorized capital stock of the corporation, \$2,000,000, divided into 20,000 shares of the par value of \$100 each.

Of such total authorized capital stock, 2,500 shares, amounting to \$250,000, shall be preferred stock, and 17,500 shares, amounting to \$1,750,000 shall be common stock.

The preferred stock shall be entitled out of any and all surplus net profits, whenever declared by the Board of Directors, to cumulative dividends at the rate of, but not exceeding, 5 per cent per annum, for the fiscal year beginning on the 1st day of January, A. D. 1901, and for each and every fiscal year thereafter, payable in preference and priority to any payment of any dividends on common stock for any such fiscal year. In addition thereto,

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at the dissolution of the corporation, the holders of the preferred stock shall be entitled to receive the par value of their preferred shares out of the surplus funds of the corporation, after payment of debts, before anything shall be paid to the holders of the common stock.

The common stock shall be subject to the prior rights of the holders of the preferred stock as herein declared. If, after providing for payment of full dividends for any fiscal year on the preferred stock, there shall remain any surplus net profits of such year, any and all such surplus new profits of such year, and of any other fiscal year for which full dividends shall have been paid on the preferred stock, shall be applicable to dividends upon the common stock when and as from time to time the same shall be declared by the Board of Directors, out of any such surplus net profits after the close of any fiscal year the Board of Directors may pay dividends upon the common stock of the corporation for such fiscal year, but not until after the dividends upon the preferred stock for such fiscal year shall have been actually paid or provided and set apart.

From time to time the preferred stock and the common stock shall be issued in such amounts and proportions as shall be determined by the Board of Directors and as may be permitted by law.

The Company shall have power, on any increase of the capital of the Company over \$2,000,000 to create two or more kinds of stock in such classes, with such denominations, preferences and voting power and restrictions or qualifications thereof as shall be lawfully prescribed by any resolution at a general meeting of stockholders passed by the affirmative vote of a majority in interest, being not less than two-thirds of the capital stock of the Company actually issued and outstanding at such meeting, in person or by proxy at such meeting, provided that at no time shall the total amount of the preferred stock exceed two-thirds of the actual capital of the Company paid in cash or property.

The Board of Directors may, before the issue of any new shares of the capital stock, determine that the same, or any part thereof, shall be offered in the first instance to all of the then stockholders, in proportion to the amount of the capital stock held by them, or make such other provision as to the issue and allotment of the new shares; and in default of any such determination, or so far as the same shall not extend, the new shares may be dealt with as if they formed part of the shares in the original capital stock of the company.

The corporation may use and apply its surplus earnings or accumulated profits authorized by law to be reserved, to the purchase or acquisition of property and to the purchase or acquisition of its own capital stock, from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall determine; and neither the property nor the capital stock so

purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation shall be regarded as profits for the purpose of declaration or payment of dividends unless otherwise determined by a majority of the Board of Directors or a majority of the stockholders.

Fifth. The names and post-office addresses of the incorporators and the number of shares of common stock subscribed for by each, the aggregate of such subscriptions (namely \$1,000) being the amount of the capital stock with which the Company will commence business are as follows:

Name.	Post Office Addresses.	No. of Shares.
Norman Grey.....	127 Market Street, Camden, N. J.	8
William H. Chew.....	127 Market Street, Camden, N. J.	1
Edward H. Chew.....	127 Market Street, Camden, N. J.	1

Sixth. That the existence of said corporation shall begin on day of the filing of this certificate in the office of the Secretary of State of New Jersey, and it shall continue perpetually.

Seventh. The following provisions for the regulations of the business and the conduct of the affairs of the corporation and the following limitations and regulations of the powers of the corporation, the directors, and the stockholders, are hereby created.

1. The Board of Directors shall have power without the assent or vote of the stockholders (unless the By-Laws direct otherwise) from time to time to fix the amount to be reserved as working capital to authorize and cause to be executed mortgages and liens upon the real and personal property of this corporation, and to sell, assign, transfer, mortgage or otherwise dispose of the whole property of this corporation.

2. The Directors shall at any time sell or dispose of all or any part of the real estate, personal property or other assets of any kind or nature, that may be owned by the Company, on the request of a majority of all the stockholders, preferred and common, to be evidenced by a vote at a meeting called on two weeks' notice, or by writing under the signature of a majority of said stockholders. Said sale shall be made for cash or in exchange for other property as may be directed by said stockholders.

3. The corporation may in its by-laws confer powers additional to the foregoing upon the Directors, and may prescribe the number necessary to constitute a quorum of its Board of Directors, which number may be less than a majority of the whole number.

4. The corporation may in its by-laws provide for voting trusts.

the issuing of trust certificates and the making of trust agreements for any lawful purpose.

15. The Directors shall from time to time determine whether and at what times and places and under what conditions and regulations the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have the right of inspecting any account or book or document of the corporation except as conferred by statute or authorized by the directors or by a resolution of the stockholders.

16. The Directors may hold their meetings, and have an office, and keep the books of the corporation (except the stock and transfer books) inside of this State.

In Witness Whereof, We have hereunto set our hands and seals, this sixth day of July, 1900.

In presence of B. F. Haywood Shreve.

NORMAN GREY, (L. S.)
WM. H. CHEW, (L. S.)
EDWARD H. CHEW, (L. S.)

STATE OF NEW JERSEY, }
COUNTY OF CAMDEN. } ss.

Be it remembered that on this sixth day of July, A. D. nineteen hundred, before me, a Master in Chancery of New Jersey, personally appeared Norman Grey, William H. Chew and Edward H. Chew, whom I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them, and each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

B. F. HAYWOOD SHREVE,
M. C. C.

Witness my hand and the Seal of the County of Camden, on the sixth day of July, A. D. 1900, and recorded in Book 15 of Incorporated Business Companies for said County, page 575.

ROBT. L. BARBER,
Clerk.

Endorsed: "Filed July 9, 1900, George Wurts, Secretary of State."

STATE OF NEW JERSEY,

DEPARTMENT OF STATE.

I, George Wurts, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of Consolidated Talking Machine Company of America, and the endorsements thereon as the same is taken from the file compared with the original filed in my office on the 9th day of June, A. D. 1900, and now remaining on file therein.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Trenton, this fourteenth day of September, A. D. 1900.

GEORGE WURTS,

Secretary of State.

(Seal.)

W. G. M. 7.

CHARTER OF THE JOHNSON SOUND RECORDING COMPANY.

In the Court of Hustings for the City of Portsmouth,

Certificate of corporators for Charter of Incorporation.

To the Honorable A. W. Watts, Judge of the said Court:

We, the undersigned, Griffin C. Callahan, Harry M. Kurtz, Robert J. Ringwalt, William E. Stokes and William H. Triol, all of Philadelphia, Pennsylvania, desiring and having agreed to form a stock company by the name, for the purposes, with the special powers and on the terms hereinafter set forth, and with all the rights, powers and privileges which by the laws of the Commonwealth of Virginia are granted to such companies do hereby certify.

First. The name of the said company is Johnson Sound Recording Company.

Second. The purposes for which the said company is formed are to manufacture, buy, sell, lease and otherwise deal in records, sound machinery, tools, and appliances for recording sound, machines for re-producing and uttering sound and other devices useful or convenient in the recording and re-production of sound; to buy, own, sell, operate and deal in laboratories for experimental purposes in the recording and reproduction of sound, and plants for the manufacturing of records, sound recording machinery and machines for re-producing sound and other property necessary or useful in the purposes aforesaid; and the said company shall have power to subscribe for, purchase or otherwise acquire, to hold and to sell or otherwise dispose of the stocks and bonds of other companies incorporated in the State.

and elsewhere; and it shall be lawful for the said company to borrow money and to issue and sell its bonds from time to time, for such terms and on such terms as its Board of Directors may deem expedient and proper in the prosecution of its business, and to secure payment of its said bonds by deeds of trust or mortgages of all or any portion of its property and franchises.

Third. The capital stock of the said Company shall be thirty thousand (\$30,000) dollars, with power to increase the same from time to time to an amount not exceeding one hundred thousand (\$100,000) dollars, and the capital stock shall be divided into shares of the par value of one hundred (\$100) dollars each.

Fourth. The amount of real estate proposed to be held by the said company shall not exceed, within the boundaries of any one county in the State of Virginia, or any one county elsewhere, fifty (50) acres.

Fifth. The place at which the principal office of the said company is to be kept and its chief business is to be transacted is the City of Richmond and State of Virginia.

Sixth. The chief and only business to be transacted is the business necessary for the fulfillment of the purposes hereinbefore set forth in Paragraph Second or properly incident thereto.

Seventh. The officers of the said Company shall be a President, a Vice-President, a Secretary, a Treasurer, and a Board of five Directors, and the names and residences of the officers who for the first year are to manage the affairs of the said Company, are:

President, Griffin C. Callahan, residing at Philadelphia, Pennsylvania; Vice-President, William H. Triol, residing at Philadelphia, Pennsylvania.

Secretary and Treasurer, William E. Stokes, residing at Philadelphia, Pennsylvania.

Directors—Griffin C. Callahan, residing at Philadelphia, Pennsylvania; Harry M. Kurtz, residing at Philadelphia, Pennsylvania; Robert J. Ringwalt, residing at Philadelphia, Pennsylvania; William E. Stokes, residing at Philadelphia, Pennsylvania; William H. Triol, residing at Philadelphia, Pennsylvania.

Eighth. The said company shall pay in lawful money of the United States of America, and not in coupons, all taxes and other demands which may at any time be due by it to the Commonwealth of Virginia.

In witness whereof, we have hereunto set our hands and seals the second day of June, A. D. nineteen hundred (1900).

Griffin C. Callahan,	(Seal)
Harry M. Kurtz,	(Seal)
Robert J. Ringwalt,	(Seal)
William E. Stokes,	(Seal)
Wm. H. Triol.	(Seal)

STATE OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILADELPHIA.

I, Frederick M. Leonard, a Commissioner appointed by the Governor of the State of Virginia, for the said State of Pennsylvania, certify that Griffin C. Callahan, Harry M. Kurtz, Robert J. Ringwalt, William E. Stokes and William H. Triol, whose names are subscribed to the writing above, bearing date on the 22d day of June, A. D. nineteen hundred (1900), have acknowledged the same before me in the State aforesaid.

Given under my hand and official seal this 22d day of June, 1900.

FREDERICK M. LEONARD,

(Seal)

Commissioner

(Rev. Stamps, 10c.)

Court of Hustings for the City of Portsmouth, Virginia:

ORDER OF COURT GRANTING CHARTER OF INCORPORATION.

And now, this 23d day of June, A. D. nineteen hundred (1900), the foregoing certificate for charter of incorporation of the Johnson Sound Recording Company, having been presented to the Honorable A. S. Watts, Judge of the said Court:

And it appearing, that the said certificate is duly made, signed and acknowledged in all respects in accordance with the laws of this Commonwealth, and that the said Court has full jurisdiction and power to grant to the persons who have made, signed and acknowledged the same a charter of incorporation.

It is ordered that the said persons, viz.: Griffin C. Callahan, Harry M. Kurtz, Robert J. Ringwalt, William E. Stokes, and William H. Triol; and their successors and such other persons as may be associated with them according to the provisions of this charter, shall be as soon as this charter has been recorded by the Clerk of this Court, certified by him to the Secretary of the Commonwealth, and lodged in the office of the Secretary of the Commonwealth, a body politic and corporate by the name, for the purposes, with the special powers and upon the terms set forth in the foregoing certificate, viz.:

First. The name of the said company is Johnson Sound Recording Company.

Second. The purposes for which the said Company is formed are to manufacture, buy, sell, lease and otherwise deal in records of sound, machinery, tools and appliances for recording sound, machines for re-producing and uttering sound, and other devices useful in the

venient in the recording and re-producing of sound; to buy, own, sell, operate and deal in laboratories for experimental purposes in the recording and reproduction of sound, and plants for the manufacturing of records, sound recording machinery and machines for reproducing sound and other devices as aforesaid and all materials and supplies, patent rights and other property necessary or useful in the purposes aforesaid; and the said Company shall have power to subscribe to, purchase or otherwise acquire, to hold and to sell or otherwise dispose of the stocks and bonds of other companies incorporated in this State and elsewhere; and it shall be lawful for the said Company to borrow money and to issue and sell its bonds from time to time, for such sums and on such terms as its Board of Directors may deem expedient and proper in the prosecution of its business, and to secure the payment of its said bonds by deeds of trust or mortgages of all or any portion of its property and franchises.

Third. The capital stock of the said Company shall be thirty thousand (30,000) dollars, with power to increase the same from time to time to an amount not exceeding one hundred thousand (100,000) dollars and the capital stock shall be divided into shares of the par value of one hundred (100) dollars each.

Fourth. The amount of real estate proposed to be held by the said Company shall not exceed within the boundaries of any one county in the State of Virginia, or any one county elsewhere fifty (50) acres.

Fifth. The place at which the principal office of the said Company shall be kept and its chief business is to be transacted is the City of Portsmouth and State of Virginia.

Sixth. The chief and only business to be transacted is the business necessary for the fulfillment of the purposes hereinbefore set forth in Paragraph Second or properly incident thereto.

Seventh. The officers of the said Company shall be a President, Vice-President, a Secretary, a Treasurer, and a Board of five Directors, and the names and residences of the officers who, for the first year, are to manage the affairs of the said Company are:

President, Griffin C. Callahan, residing at Philadelphia, Pennsylvania; Vice-President, William H. Triol, residing at Philadelphia, Pennsylvania; Secretary and Treasurer, William E. Stokes, residing at Philadelphia, Pennsylvania.

Directors: Griffin C. Callahan, residing at Philadelphia, Pennsylvania; Harry M. Kurtz, residing at Philadelphia, Pennsylvania; Robert Ringwalt, residing at Philadelphia, Pennsylvania; William E. Stokes, residing at Philadelphia, Pennsylvania; William H. Triol, residing at Philadelphia, Pennsylvania.

Eighth. The said Company shall pay in lawful money of the

United States of America, and not in coupons, all taxes and demands which may at any time be due by it to the Commonwealth of Virginia.

And the said Company shall have all the general powers subject to all the general restrictions conferred and imposed governed by the provisions of chapters 46 and 47 of the Code of Virginia, which took effect on the first day of May, A. D. one thousand eight hundred and eighty-eight (1888), so far as applicable to and not inconsistent with this charter, and shall be subject to all laws heretofore or hereafter enacted to alter or amend the same; reserving to the General Assembly the right to repeal, alter or modify this charter at its pleasure.

Witness the signature of the Honorable A. S. Watts, Clerk of the said Court, and the seal of the said Court attested by the Clerk thereof, this 23d day of June, A. D. nineteen hundred (1900).

A. S. WATTS

Attest:

C. T. PHILLIPS,

(Seal.)

Clerk.

In the office of the Clerk of the Court of Hustings, City of Portsmouth, Virginia:

I, the undersigned, C. T. Phillips, Clerk of the said Court, do hereby certify to the Secretary of the Commonwealth, for recording in his office; the foregoing charter of the Johnson Sound Recording Company (including both the certificate of incorporators for charter of incorporation and the order of Court granting charter of incorporation) which has been received and recorded by me this day in my office in charter book No. 2, page 135. And I further certify that the charter fee of \$120.00 and recording fee, have been paid.

Witness my hand and the seal of said Court, this 23d day of June, A. D. nineteen hundred (1900).

C. T. PHILLIPS,

(Seal.)

Clerk of Court.

all taxes and other
the Commonwealth

\$4.00

COMMONWEALTH OF VIRGINIA

Office of the Auditor of Public Accounts.

Richmond, June 25, 1900.

This is to certify that C. T. Phillips, Clerk of Corporation Court
Portsmouth city, has paid into the treasury one hundred and four-
ty dollars, fee on charter of Johnson Sound Recording Company,
and his commission.

C. LEE MOORE,

Acting Auditor of Public Accounts.

COMMONWEALTH OF VIRGINIA

June 25th, 1900.

Charter lodged and recorded.

J. T. LAWLESS,

Secretary of the Commonwealth.

Commonwealth of Virginia:

J. T. Lawless, Secretary of the Commonwealth of Virginia, cer-
tifies that the foregoing is a true copy of the charter of the Johnson
Sound Recording Company, on file and of record in this office.

Given under my hand and the Lesser Seal of the Commonwealth, at
Richmond, this 15th day of October, A. D. 1900.

J. T. LAWLESS,

Secretary of the Commonwealth.

(Seal)

Hustings for the

said Court, here-
by recording in the
Sound Recording Com-
pany for charter of in-
corporation of
day in my office
to certify that the
has paid to me.

23d day of June.

LIPS,
Clerk of Court.

COPY

from

THE NATIONAL ARCHIVES

Record Group No. 21

No. 20.

October Sessions, 1900.

Circuit Court of the United States,
EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

FRANK SEAMAN,

Complainant,

v.

ELDRIDGE R. JOHNSON,

Defendant.

DEFENDANT'S AFFIDAVITS AND EXHIBITS.

HORACE PETTIT,

HOWARD W. HAYES,

Solicitors and of Counsel for Defendant.

604 Stephen Girard Building,
Philadelphia, Pa.

International Printing Co.

Filed
Dec. 20-1900
Samuel Bell
Clerk

IN THE UNITED STATES CIRCUIT COURT,
Eastern District of Pennsylvania.

FRANK SEAMAN,
Plaintiff,
v.
ELDRIDGE R. JOHNSON,
Defendant.

} October Sessions, 1900.
No. 20.

IN EQUITY.

Affidavit No. 1 of Eldridge R. Johnson.

COMMONWEALTH OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILADELPHIA, }

ELDRIDGE R. JOHNSON, being duly sworn according to law deposes and says as follows :

I am the defendant in the above entitled case, and am a citizen of the United States, and a resident of the City of Philadelphia, State of Pennsylvania.

I desire to state as briefly as possible in the first place the facts concerning my relations with the Gramophone, and how I first became interested in the manufacture of the same; also the facts concerning my business dealings with the Berliner Gramophone Company, and such business relations as I have had with Frank Seaman, the complainant herein.

Early in the year 1896 my attention was for the first time directed toward the Gramophone, a talking machine of the disc type, by a customer named Whittaeer who was applying for or about applying for a series of patents, at that time, in which he was interested relating to talking machines.

I was at that time and have been for many years last

Best narrat
account as of 3/74
RRW

passed engaged in the manufacture of machinery and machine supplies on North Front Street, Camden, N. J.

Early in 1896 I made a number of models for Mr. Whittacre relative to talking machines which were not altogether satisfactory. It was while doing this experimental work that the Gramophone was particularly called to my attention. It was then a very crude machine and as then made was not in a commercial form. The Gramophone at this time was being manufactured and sold by the Berliner Gramophone Company of Philadelphia under a contract with the United States Gramophone Company, of Washington, D. C. The Berliner Gramophone Company about October, 1896, entered into a contract with Frank Seaman, the complainant herein, by which he became the exclusive selling agent of the said Berliner Gramophone Company in the United States outside of the District of Columbia.

Previous to this time I had become interested in talking machines through my introduction to the subject by Mr. Whittacre. After making a thorough study of the Gramophone as then constructed, I became convinced that I could devise and construct a machine which would be very much superior to the Gramophone as it then existed in 1896. I explained my plans to Mr. Whittacre and suggested that he and his associates furnish sufficient money to carry out the necessary experiments, further to place my new ideas at his disposal, providing he would guarantee, that all the business, which my ideas and inventions may develop should be brought to my factory. Mr. Whittacre refused my proposition and after several ineffectual attempts to perfect his own plans became discouraged and quit. After thorough consideration and some experimenting, I decided to build the said talking machine at my own expense, which would be superior to the Gramophone of the Berliner Company as then constructed; after several unsuccessful attempts, I succeeded in constructing a machine that gave the desired results, i. e., a compact and portable mechanism operating by a spring that could be easily wound by hand, capable of revolving a flat

record at a regular desired speed. My machine was the first of the disc type of talking machines to give such results with the spring motor mechanism just referred to, the Gramophone as constructed up to that time having been of a rather crude construction operated by hand by a crank handle and having little commercial value. The machine which I then devised and constructed was arranged with the necessary mechanism so as to regulate the speed of the motor to a nicety which is one of the essential requisites in the reproduction of sound in talking machines. In the hand operated machine of the Berliner Gramophone Company it was necessary for the operator to maintain considerable exertion of a monotonous character which tended to render the machine unpopular. The Berliner Gramophone Company expended something over \$30,000 about this time in trying to market it, the Gramophone as then constructed, but without successful results.

While my new machine gave the desired results as to speed and regulation, it did not altogether please me in the matter of appearance. The results, however, encouraged me to build other machines, and to make new inventions which I was constantly doing combining the results of the first with my improvements. I built quite a number of machines but found from time to time that they were still susceptible of improvement, and that led me to continue my work of developing and perfecting the devices and parts which go to make up a commercial Gramophone, of which I have been the manufacturer since 1896.

I mention these facts to show that the present perfected commercial Gramophone did not grow of itself, but was developed by my improvements through a series of long and extensive experiments.

In the early stages of my efforts to improve the Gramophone to make it a successful commercial article I grew somewhat alarmed and discouraged, fearing that it might prove too much for my purse, I made a proposition to Mr. Levi Montross,

Montross
connection

machinist of considerable reputation and experience in the manufacture of machinery and parts. My purpose in making this proposition to Mr. Montross was to gain assistance financially and in methods and plans for selling. After some further experimenting we decided to sell the machine as it was at that time, and to make improvements as the business progressed. We secured our first order from the Berliner Gramophone Company, August 10, 1896, being specified that the machines were to be constructed so as operate the Berliner records. It was about the time that this order was placed that the Seaman contract above referred to was executed.

The new Gramophone as constructed by us met with unusual success from the start, and I believe that its development and success very largely induced Mr. Seaman to enter into a contract with the Berliner Gramophone Company, as Mr. William Barry Owen, who at that time had charge of the selling department for Mr. Seaman had been following my experiments very closely.

Shortly after the first order had been secured, Mr. Montross and myself had a disagreement regarding the division of profits; the result of which was I assumed the entire cost of experimenting and the responsibility of filling and executing orders as well as orders that might be obtained in the future, agreeing to pay Mr. Montross a royalty on a specific number of machines in lieu of his interest.

About this time I became acquainted with Mr. Thomas S. Parvin, then and now President of the Berliner Gramophone Company, and also with Mr. Frank Seaman, the complainant in this case. I lost considerable money at first in the manufacture of the Gramophone, but as the orders from the Berliner Gramophone Company became more numerous, I began to realize and to make up my previous losses. As my business with the Berliner Company appeared to be growing, with the Gramophone as improved at its disposal, I sold only to them at that time, though I subsequently manufactured large numbers of machines for other Gramophone Companies in other countries. ||

I have since 1896 devoted what time I could spare from my general business to improving the gramophone, expending in experiments and patents, which I had taken out in this country and abroad, over \$35,000. I have at the present time about twenty patents and about forty applications for patents for my invention are pending. I am now maintaining and operating one of the best equipped laboratories in the world for the purpose of developing and perfecting the gramophone, devoting one entire floor of my factory to this purpose.

Since I first commenced to manufacture the gramophone as perfected and improved by me for the Berliner Gramophone Company, I have made a practice of consulting Mr. Parvin and also Mr. Frank Seaman, the selling agent of the Berliner Gramophone Company, from time to time, relative to the application of the improvements in the machine to their purposes. I have been perfectly fair and liberal with both. Relative to the mechanical side of the business of the Berliner Gramophone Company, and of the said Frank Seaman as selling agent, I have been invariably consulted by them. My relations with Mr. Seaman and the Berliner Gramophone Company have been very close during the past few years, owing to my business connection in the manufacture of the gramophone for the Berliner Company upon its order, and it has been this fact which now leads Mr. Seaman to charge me with collusion with the Berliner Gramophone Company. I have no connection with that corporation whatsoever, and am now, and always have been since my first business relations with them, independent of that company, occupying the relations of manufacturer and customer.

At one time the Montross Metal Shingle Company, of Camden, N. J., secured an order, at Mr. Seaman's request, from the Berliner Gramophone Company for gramophones, and delivered quite a number of the same to the Berliner Gramophone Company. This machine I ascertained upon

Samuel Hunter as
p3-4

investigation to be an infringement of certain U. S. Letters Patent No. 601,198, issued to me March 22, 1898, for improvements in gramophones and actuating devices therefor, and in March, 1898, I so notified the Berliner Gramophone Company through my attorney, Mr. Horace Pettit. On examination of the matter, the Berliner Gramophone Company became convinced that my charges were true, and notified Montross to that effect. After several unsuccessful attempts to avoid the claims of my patents, Mr. Montross requested and secured permission from me to fill the balance of his order, and from that time he desisted from further infringement. A copy of the letter of my attorney to the Berliner Gramophone Company, notifying it of the said infringement, is hereto annexed, marked "Exhibit A."

In my work relating to development and improvement of the gramophone, I have employed many skilled experts at high salaries, and I am now employing many of said experts, and a large skilled force in my laboratories and shops, whose time is devoted entirely to the manufacture and development of the gramophone and gramophone records.

I have, besides making the inventions myself and securing many patents in the United States and foreign countries for my own inventions, purchased inventions of others relating to improvements on Gramophones and have spared no effort nor expense to improve the Gramophone, and to acquire the control of improvements in this type of machine.

In August, 1897, Mr. William Barry Owen visited Europe for the purpose of selling the Berliner Foreign Patents. Previous to his departure Mr. Owen had several conferences with me as to the purchase of my foreign rights relative to patents, but at that time we came to no definite understanding. Mr. Owen on this visit was unable to dispose of the Berliner foreign patents, but he did succeed in working up quite a successful business and sold many of the improved commercial Gramophones which I had manufactured at my shop for the Berliner Gramophone Company,

*Owen &
English Gramophones
- 1st Trip*

and which Mr. Owen had purchased from it through Mr. Seaman.

These machines embodied numerous inventions and improvements of my own, some of which were covered by Letters Patent, and after ascertaining that these machines could be sold at a considerable profit in Europe, Mr. Owen succeeded in interesting Mr. Trevor Williams, of London, Eng and, and secured in this manner considerable financial backing. At Mr. Owen's request I went to London and sold to Mr. Williams several of my foreign rights relative to patents on Gramophones for quite a large sum of money. Shortly after securing these foreign rights, Mr. Owen and Mr. Williams formed the Gramophone Company Limited, of London, which Company made a profit last year of about \$350,000. I also arranged with the European parties that I should manufacture Gramophones for them direct. It was this last arrangement which seemed to strain my relations with Mr. Seaman, as it placed me in practical opposition to him as far as the manufacture and sale of Gramophones abroad was concerned. His contract, however, with the Berliner Gramophone Company gave him no rights in Europe, nor did it give him any rights to sell or handle my improvements in this country. He sold them only when purchased from me by the Berliner Gramophone Company and sold by them to him. Mr. Seaman objected to the new arrangement and made every effort to prevent me from selling, but he took no action at law. He continued to sell the Gramophone manufactured by me for the Berliner Gramophone Company at their order, which embodied my patented improvements.

It is clear from the foregoing that I have been operating as an independent manufacturer for several years past, and that my legal right to manufacture has never been disputed. I never had any agreement with the Berliner Gramophone Company respecting the manufacture of Gramophones for other concerns, and no protest or effort to prevent me from so doing has ever been legally made, although I have manufactured Gramophones in large quantities of the new and

improved type, embodying my various patented improvements, for numerous Gramophone Companies in foreign countries. At the present time I have pending several suits in the United States Circuit Courts for infringements of Letters Patent covering my improvements, such as have been and are embodied in the commercial Gramophone, some of the said suits being against the National Gramophone Corporation and the Universal Talking Machine Company, both having their principal office in the City of New York, and both of which Companies I am informed and believe were organized by, and are now controlled by, Frank Seaman, the complainant in this case:

Mr. Seaman, shortly after securing the sole right for the United States, October 10, 1896, from the Berliner Gramophone Company, organized the National Gramophone Company, in which he, at the time of the organization, subscribed for all the stock, with the exception of two shares, and this Company sold the entire stock of Gramophones which I had manufactured, embodying my improvements, for the Berliner Gramophone Company until about March, 1899, when he organized the National Gramophone Corporation, under the laws of the State of New York, for the purpose of succeeding to the business of the National Gramophone Company and taking over all its property, good will, etc., which he did at that time, and shortly afterward the National Gramophone Company was formally dissolved. Mr. Seaman, after the organization of the National Gramophone Corporation, sold all the Gramophones which he secured from the Berliner Gramophone Company, and which I had manufactured for it, through this corporation. Mr. Seaman was so closely allied to these corporations at all times during my business transactions with the Berliner Gramophone Company that I found it necessary constantly, in business transactions, to secure the approval of these three, namely, the Berliner Gramophone, the National Gramophone Company (subsequently the National Gramophone Corporation) and Frank Seaman.

I learned that the Berliner Gramophone Company's profit

was derived by a percentage or advance charge to all manufacturers' charges, as, for example, if my charge for a certain article was \$100.00 the Berliner Gramophone Company billed the same to Mr. Seaman at \$140.00; this fact very early gave rise to a contention between Mr. Seaman, the Berliner Gramophone Company and myself. Mr. Seaman made every effort to reduce my charges, and the Berliner Gramophone Company, in order to satisfy Mr. Seaman of its good faith, frequently requested me to make my arrangements with him as to prices before ordering the goods.

Mr. Seaman has tried in many unfair ways to force my prices lower; such as taking samples of machines which he knew to embody my own inventions, and sending them to rival manufacturers for estimates. When the estimates received would show a saving to him, he would attempt to induce the Berliner Gramophone Company to order of the other manufacturer, regardless of the expensive litigation which such a course should be sure to cause, involving questions of infringements of my patents. Mr. Seaman frequently tried to cause quarrels between the Berliner Company and myself, thinking that by so doing he would benefit himself, using as arguments that I was planning to seize the business and said that I was dangerous to their interests, and growing rich from overcharges. He made some progress with these arguments, and no doubt would have caused a rupture long ago, if the Directors of the Berliner Gramophone Company had had more confidence in Mr. Seaman, or if they had found the machine as satisfactory as the machine which I manufactured embodying my improvements.

Mr. Seaman during the high tide of the Gramophone's prosperity organized under the laws of the State of New York, the Universal Talking Machine Company. For a time this Company traded in slot machines buying Gramophones through Mr. Seaman which I had manufactured for the Berliner Gramophone Company, and placed on them a nickel in the slot attachment manufactured by themselves.

Mr. O. D. LaDow, who succeeded Mr. William Barry

original
Universal

Owen about October, 1897, as manager of the National Gramophone Company, had charge of the selling department for Mr. Seaman and subsequently became the General Manager and Secretary of the National Gramophone Corporation, and also President of the Universal Talking Machine Company, which two positions he now holds in the said Companies.

The Universal Talking Machine Company in 1899 commenced the manufacture of a machine called the Zonophone which for a time they exported. Shortly after they commenced the use of this name Zonophone, I remember my hearing from both sides of a dispute between Mr. Seaman and the Berliner Gramophone Company as to Seaman's right to use the word Zonophone. Mr. Seaman claimed it was necessary so as to make a greater distinction between the name Gramophone and the names of other talking machines, the Berliner Gramophone Company claiming that the name "Berliner" added was distinction enough and that Seaman was violating his contract by using the name Zonophone; the name, however, was used by Seaman in the National Gramophone Company for some time, as is evidenced by their numerous advertisements, copies of which are ready in Court to be produced.

After Mr. Seaman organized the Universal Talking Machine Company and started the manufacture of the Zonophone, I gradually lost prestige with Seaman; my machine which had heretofore given splendid satisfaction and good results in every way save in the matter of cost, was suddenly alleged by him to be very poor in construction; the machines which I manufactured and sent to Europe were reported to be working finely, but the same machines here Mr. Seaman began to find serious fault with. Mr. LaDow, who was an officer of the National Gramophone Corporation sent in many complaints; they discovered with the aid of an alleged expert many imaginary defects in the Gramophone which I manufactured, and as manager for the National Gramophone Corporation he daily found new charms in the Zonophone manu-

factured by the Universal Talking Machine Company, of which he was President.

Mr. Seaman then attempted to compel the Berliner Gramophone Company to order all its goods from the Universal Talking Machine Company. This plan he attempted to carry out by trying to force the Berliner Company under a certain clause in the contract of October 10th, 1896, with him, which plan however failed. The Zonophone was clearly a poorly constructed and inferior machine though it embodies constructions which have been copied from improvements in the Gramophone, which have been patented to me, and for which infringement suits are now pending brought at my instance, as well as suits by the Berliner Company.

The Berliner Company having refused Seaman's proposition a rupture between Seaman and the said Company was the result. The contract of October, 1896, was declared cancelled by the Berliner Gramophone Company. Seaman had shortly before filed a bill in equity in the United States Circuit Courts in Virginia seeking to restrain the Berliner Gramophone Company from operating or selling goods to anyone but himself by virtue of the said contract, and succeeded in getting a temporary injunction.

The National Gramophone Corporation started the sale of the Zonophone as made by the Universal Talking Machine Company and advertised that the Gramophone was withdrawn, and that the Zonophone was an improved Gramophone.

Previous to all these complications between the said Frank Seaman and the Berliner Gramophone Company, the American Graphophone Company claiming that the Gramophone was an infringement on its patents, brought suit against Seaman and the National Gramophone Company in New York, and also filed a bill in Philadelphia against myself and others. After it became apparent to Seaman that he could not influence the Berliner Gramophone Company to order the

Zonophone and, thus control the preferred price, the National Gramophone Company and its successor the National Gramophone Corporation, one of the defendants to the New York suit of, the American Graphophone Company, entered a consent decree admitting the validity of the Graphophone patents in suit and declaring the Gramophone Patents invalid. Since the entry of this decree circular letters have been issued on the letter heads of the National Gramophone Corporation on which Seaman's name appears as Treasurer, announcing the new deal, copy of one of which letters is hereto attached, marked "Defendants' Exhibit B."

The situation as it stood about the time of bringing this suit may be summarized as follows :

The Berliner Gramophone Company, who on account of their large purchases, have been my sole customers in this country, were tied up by the preliminary injunction which Mr. Seaman had secured in the Virginia courts based on the contract of October, 1896, and are practically without hope of immediate relief or release for many months.

Mr. Seaman, therefore, in carrying out his plans, tied up the Berliner Gramophone Company, which left in the field of Gramophone manufacturers the Universal Talking Machine Company and the National Gramophone Corporation, which were controlled by himself; the only other manufacturer of Gramophones being myself.

Mr. Seaman's next move after tying up the Berliner Gramophone Company in order to have the field exclusively for his companies, the National Gramophone Corporation and the Universal Talking Machine Company, desired to have me out of the way and naturally attempted, by some means, to have me also enjoined from doing business if possible; he therefore brings this suit, his sole hope being to try to so link me with the Berliner Gramophone Company that the one decree, namely, the decree in the Virginia suit, would suffice to close me up also.

The National Gramophone Corporation and the Univer-

sal Talking Machine Company, Mr. Seaman's companies and the American Graphophone Company and Columbia Phonograph Company now advertise that they are in alliance and are operating together as shown by defendant's "Exhibit B" hereto attached and for the purpose of squeezing out of the talking machine business all other manufacturers.

The National Gramophone Corporation's advertisements in the magazines, and by circulars and otherwise, lately became so offensive, and were so palpably unfair, and so injurious to this deponent's rights, and to his business, that he was obliged to enjoin it by judicial proceedings in this Court, and upon bill in equity filed by this deponent in this Court against the said National Gramophone Corporation, of ~~Citizens' Union, 1900 No. 25~~, on motion for preliminary injunction, Judge DALLAS, by decree dated November 13, 1900, ordered that a preliminary injunction issue forthwith, as set forth in the said decree, a copy of which is hereto annexed, marked "Defendant's Exhibit N," and which decree, or a certified copy thereof, is ready in Court to be produced. A writ of injunction was at once issued, and the said National Gramophone Corporation is now under said injunction, as set forth in the said decree.

Mr. Seaman's plan, as is evident, is to hold up the Berliner Gramophone Company and cut off their income so that they may have no money with which to fight litigation. The Graphophone Company will at the same time endeavor to make the best use by advertising and otherwise of the consent decree entered by the National Gramophone Company for the purpose of their plans so as to, as far as possible, influence the trade by leading them to believe that the Graphophone patents have been sustained and so injure my business, the National Gramophone Corporation and the Universal Talking Machine Company in the meantime unlawfully using the valuable improvements patented to me, knowing that as my patents have not been adjudicated it would be difficult for me to secure a preliminary injunction

and that it may take years to stop them, evidently hoping in the meantime to crush me by expensive litigation.

There is but one thing left for me to do under these circumstances, and that I have done, which was to manufacture and sell my own goods.

I may be within some of the unimportant claims of the Berliner Gramophone Company, but I do not admit this until it shall have been so adjudicated; when it is shown that I use the constructions which may be adjudicated to the Berliner Company as valid, I will be ready to conform to such decision as may be had against me.

I believe that Seaman is the chief in a conspiracy to crush the Berliner Gramophone Company and the United States Gramophone Company and myself out of existence, and in this I believe he is assisted by the American Graphophone Company which is in alliance with the said Companies of the said Seaman, as shown by "Exhibit B" hereto attached, upon which said circular letter Seaman's name appears as Treasurer of one of these Companies.

The National Gramophone Corporation by its advertisements are destroying the further interest which Mr. Seaman apparently seeks to protect by his bill of complaint in this case against me.

It is clear that Mr. Seaman, through his companies, the National Gramophone Corporation and the Universal Talking Machine Company, is doing the very thing in selling and advertising the goods which they are selling and advertising without license of the Berliner patents, which he claims that I am doing and seeks to restrain me by this bill of complaint from doing.

That Mr. Seaman never considered that I had any other relations with the Berliner Gramophone Company than that of manufacturer and customer, and that I was entirely free and independent of the Berliner Gramophone Company is evidenced, among other things, by his correspondence with me; as illustrations of the same I produce herewith Seaman's letters to me of June 5, 1897, February 14, 1900, and May 18, 1900, which are ready in Court to be produced, and cop-

ies of which are hereto annexed, marked "Defendant's Exhibits C, D and E."

In Regard to the Use of the Name "Consolidated Talking Machine Company of America," by Me, I Would State that :

the complications between the Berliner Gramophone Company, Seaman and the advent of the Zon-o-phone made it necessary for me to go into the business of selling my talking machines as well as manufacturing them.

I decided to start a new company or branch of my business to handle my selling department, and determined upon the title Consolidated Talking Machine Company. I immediately issued a circular to this effect, and it is now understood by all commercial agencies and all people with whom I do business, that I am responsible for the actions of the Consolidated Talking Machine Company. My name appeared on all printed matter, and no one has a single dollar invested in the enterprise but myself. I am under no obligations or contract, either written or verbal, with any other person or corporation, nor am I in collusion with any officer of the Berliner Gramophone Company or any other company.

My reason for using the title, Consolidated Talking Machine Company, is that for the last two years I have been trying to map out a plan of consolidation of concerns interested in disc talking machines, and am still working to the end. I am in constant correspondence with every such concern, and have been for the past two years.

I had no intention of trying in any manner to interfere with the Consolidated Talking Machine Company of America, which never did any business, and thought I had a perfect right to use the name I adopted. Since suit has been brought against me by that company I have been arranging my plans to discontinue the use of this title.

I still believe that such a move looking to consolidation would benefit all, as the saving in expense of litigation of itself would pay fifty per cent. interest of the necessary working capital.

This, combined with the saving in the end of organizing, and the advancement which the co-operation of all experts and processes would give to the art, is beyond question the most sensible thing to do. I do not entirely feel discouraged even now, as each faction has expressed itself as convinced of the benefit of such a combination.

The arrangements of details, however, is a tremendous undertaking made doubly hard by the very bitter feeling that exists in many quarters. In order to counteract this feeling, as much as possible, I have made a special practice of associating freely with all factions, even though the party might be making unfair efforts to injure my business. Mr. Seaman and Mr. Morse well understand this, and Mr. Seaman's mention of my trip to Virginia on the same train in company with Parvin was entirely uncalled for, and not under the conditions as stated by Mr. Morse.

The advertisements in the September magazines were intended to be "Consolidated Talking Machine Company," the words "of America", were inserted by mistake. Such a mistake was easy to make under the conditions. My organization at that time was entirely new, and in considerable confusion. We were much pressed for time, on account of the nearness of the closing date for advertising by several magazines.

The similarity of Catalogue is explained by the fact that I employ the same artists as all talking machine manufacturers and in particular the same as the Berlin Gramophone Company, these artists being better known to me than any others, also having songs or music better suited to disc records, the disc records being shorter than the cylinder records, and require special arrangements of the parts.

The cuts are the same for the reason that the Berliner Gramophone Company, had asked and received samples of all my new designs with a view of ordering them.

Samples were furnished to Gram-o-Phone Companies all over the world at the same time. The Berliner Company did not order from any sample save "Style B." shown in my

catalogues, this style is my design, and can only be manufactured by myself. The goods made up special to the Berliner Gramophone Company, are still in my factory.

The cut showing the small dog entitled "His Master's Voice" was used by the Berliner Gramophone Company, in common with the London Gramophone Company, Limited.

The picture is the property of the London Gram-o-Phone Company, Limited, and shows the improved Gram-o-Phone manufactured by me. The picture was originally painted at the order of Mr. Owen, of the London Company, and I have his license and permission to use it.

The London company has the right to make and sell my goods in certain countries of Europe, by virtue of the purchase of my patents. They also sell me, or anyone who may use my goods, the picture. Mr. Berliner uses my goods in Canada, and the pictures also by purchase. He cannot exclude me from its use by copyright. The London Company allows its customers to make small copies. I suppose they find the advertisement creates a sale for the large pictures, which they make a good profit on. Mr. Seaman well understands all these things.

Should his claim as set forth in his complaint be true, he must need protection from the National Gramophone Corporation far more than from me, as that company's efforts tend to *destroy* the property he claims in the gramophone, while my efforts can but improve the hold and reputation it has on the market.

If the property is his, as he asserts, he has an ample remedy at law and ample opportunity to recover damages from me, as I am the only private individual doing business in my own name in the talking machine business, and am thoroughly responsible financially.

The records which I am selling are made by a process entirely separate and distinct from the Berliner process. They are not made by the same process as maintained in H. H. Smith's affidavit, but by a later and different process, in an entirely new and improved laboratory, in which neither the Berliner

Gramophone Company, nor any other company or individual, has any ownership whatever. Mr. Smith has never entered my present laboratory, and I doubt very much if he has any information concerning it. The process is covered by numerous patent applications, and I have disclosed the information to but a limited number of persons who are under compact and agreement not to disclose the same while the patents are pending. It is quite true that certain employees of the Berliner Company had access to my laboratory during the spring of 1900, but it is not true that they were there for the purpose of assisting me in the manufacture of matrices or records. It is not true that 200 or any other number of records or matrices were manufactured by me for the Berliner Gramophone Company.

The National Gramophone Corporation, the Universal Talking Machine Company, and the American Talking Machine Company have been duplicating and counterfeiting the records of other companies.

These concerns, while advertising a new process and purporting to be operating under a license from the American Graphophone Company, were purchasing genuine disc records at fifty cents each, or less, and then making a matrix from such records, by copperplating, and therefrom pressing large numbers of counterfeit records.

This pernicious practice threatened to totally destroy all possible chances of profit in making records from the original sound, and it was decided by the Berliner Gramophone Company experts that some system must be devised to make copying more difficult.

I eventually agreed to make a series of experiments for the purpose of securing some plan to prevent this counterfeiting. The Berliner Gramophone Company, who was then negotiating with me for the purchase of one of my processes for making records, agreed to pay a portion of the expense incurred to determine the value and efficiency of the said process. The experiments under this arrangement were continued up to last June, and the bills were probably those

referred to by Smith. The arrangements referred to above with the Berliner Company were never concluded, and while about one hundred satisfactory matrices were manufactured, they were in no measure the property of the Berliner Gramophone Company, but on the contrary were my property.

A portion of the experiments was the practical use of the matrices. In order to test the matrices at the least possible loss, I arranged with the Berliner Company, that it should order a certain number of records to be pressed by the Duranoid Company, of Newark, N. J., offering to loan the matrices for that purpose, but it was distinctly understood at the time, and especially agreed, that the matrices should not pass out of my control. The matrices were delivered by me to the Duranoid Company, and were subject to a recall by me at any time. The patent marks referred to by Smith affidavit were pressed in these records at the request of the Berliner Company.

The lettering on the face of record was also the order of the Berliner Company, as it was their purpose to market the records and thereby save the cost of the test. The lettering on matrices was of a temporary nature, and was removed by me after receiving the matrix from the test. The announcement in the records of the Berliner name was one of the several plans adopted to prevent copying. I allowed this title to be used as there were other Gramophone Companies who used the name Berliner in advertising, and I expected to sell the matrices to the one who would pay the highest price. I am not, however, using the matrices mentioned above, since the order from this Court, as my counsel advised me then that it was not advisable to use these until the case should be again before the Court.

Eldridge R. Johnson

ELDRIDGE R. JOHNSON.

Sworn and subscribed before me this 14th day of
December, 1900.

Charles H. Speckman

CHARLES H. SPECKMAN,

[SEAL]

Notary Public.

IN THE UNITED STATES CIRCUIT COURT,
Eastern District of Pennsylvania.

FRANK SEAMAN,	}	October Session, 1900.
<i>Plaintiff,</i>		
<i>v.</i>		
ELDRIDGE R. JOHNSON,	}	No. 20.
<i>Defendant.</i>		
		In Equity.

SUR MOTION FOR PRELIMINARY INJUNCTION.

Affidavit No. 2 of Eldridge R. Johnson.

COMMONWEALTH OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA. } ss.

ELDRIDGE R. JOHNSON, being duly sworn according to law, deposes and says, as follows:—That he is a citizen of the United States, a resident of the City of Philadelphia, State of Pennsylvania, and is the defendant in the above entitled suit.

That he is and has been for many years past a manufacturing machinist having his factory in Camden, New Jersey, and has been for several years past engaged, among other things, in the manufacture of talking machines known as gramophones.

That at 10.30 P. M., October 22, 1900, he was served at his house by some one who represented himself to be an officer of the court, with what purported to be a copy of a Bill of Complaint filed in the above entitled case on October 22, 1900, and signed October 20, 1900, together with copies of exhibits thereto attached, referred to in the said Bill of Complaint, together with copy of an affidavit purporting to be

signed by Waldo G. Morse, complainant's attorney, and an affidavit of Charles S. Hall and of Henry K. Smith, and with what purported to be a copy of a restraining order signed "By the Court," bearing date October 22, 1900, purporting to restrain this deponent from manufacturing, buying and selling, giving away, delivering or trading with any of the Gramophone Records, matrices, machinery or appliances for the production thereof or goods made by him under certain patents purporting to be held by the Berliner Gramophone Company, as averred in the said bill, etc., and from using the name or word "Gramophone" and the name "Consolidated Talking Machine Company," etc. Said restraining order purporting further to rule that upon said bill and affidavits and such other and further affidavits as may be filed with the court on or before October 30, 1900, the defendant show causes why the restraining order should not be had and continued until final hearing.

On October 30, 1900, the said restraining order was upon the motion of this deponent materially modified by Judge MACPHERSON upon hearing counsel for both sides. A copy of said modified order is hereto annexed and marked "Defendant's Exhibit, F."

This deponent deposes and says that the said bill of complaint and affidavits and said restraining orders are based upon a certain alleged agreement between the corporation known as the Berliner Gramophone Company and Frank Seaman, the complainant in this cause, dated October 10, 1896, and upon certain alleged litigation and special injunction issuing out of the U. S. Circuit Court for the Western District of Virginia in a certain suit in equity pending between the said Frank Seaman and the Berliner Gramophone Company based upon said contract and brought to restrain the said Berliner Gramophone Company from doing business with anyone in gramophones and gramophone goods except the said Frank Seaman and to restrain the said Berliner Gramophone Company from operating in matters pertaining to said contract of October 10, 1896, and from taking advantage of

certain breaches of contract made by the said Frank Seaman as alleged by the said Berliner Gramophone Company.

That the said bill and affidavits filed in this case charge this defendant with conspiring with the said Berliner Gramophone Company to injure the complainant by manufacturing selling and advertising for sale gramophones, and other talking machine goods and accessories.

That the complainant attempts to connect this defendant with the Berliner Gramophone Company by the statement that a certain corporation styled the Consolidated Talking Machine Company of America was organized for the purpose of consolidating the interests of the United States Gramophone Company and the Berliner Gramophone Company for the purposes alleged of defrauding the said Frank Seaman, and that because the defendant is trading under the style and name of the Consolidated Talking Machine Company, which name is quite similar to the name the Consolidated Talking Machine Company of America, that he is by reason of this fact evidently conspiring with the Berliner Gramophone Company against the interests of the said complainant,

All of which allegations and things charging conspiracy or any connection of this defendant with the Berliner Gramophone Company or the United States Gramophone Company this deponent positively and emphatically denies, and denies all connection whatsoever with the said Berliner Gramophone Company in the premises, and avers that he is and always has been separate, independent and apart from the Berliner Gramophone Company, and has never occupied any relations to the said company other than that of manufacturer and customer. That this deponent has manufactured for the Berliner Gramophone Company all the gramophones or parts comprising the material portion thereof since the Berliner Gramophone Company gave him the first contract three or four years ago, and that this deponent, during the last three or four years, has invented and patented many valuable improvements upon the gramophone which have tended largely to make it the successful commercial machine which it has become.

That this deponent is not under contract relations with the Berliner Gramophone Company at the present time, and has not made any talking machines or talking machine parts for the said Berliner Gramophone Company since about July, 1900.

That this deponent had not at the time of suit brought, and has not now, any connection whatsoever or engagements or agreements with the said Berliner Gramophone Company, or United States Gramophone Company, or with the complainant in this case, relative to the manufacture of gramophones or talking machines or talking machine records, or with any of the officers or directors of the said concerns whatsoever, the said Berliner Company however is indebted to this deponent at the present time in about the sum of eight thousand dollars for certain work done and goods furnished heretofore.

And this deponent further states that he has not in his possession any gramophones, gramophone records, matrices, machinery or appliances for the production thereof belonging to the Berliner Gramophone Company as averred in said Bill of Complaint save a piano which this deponent is not now using, and which is at his place at the present time on storage, and save an old recording machine which was sent to this deponent by the Berliner Gramophone Company about one year ago, and the work thereon has not been finished, and is not finished to-day, and this deponent has not used the said machine for making any records which are now in his possession, and is not now using the said machine, and this deponent denies that the said Berliner Gramophone Company or the said Seaman has any right or equity whatsoever in any gramophones, gramophone records, talking machines or accessories in this deponent's possession or belonging to this deponent.

And this deponent denies that he has any connection whatsoever with the Consolidated Talking Machine Company of America, and avers that as stated in his circular of October 4, 1900, that the title Consolidated Talking Machine Company

is merely a name under which the said deponent, Eldridge R. Johnson, prefers to do business, as more particularly herein-after stated, for the purpose of keeping this particular branch of the business separate and apart from his general machinist business, and which he has conducted on North Front street, Camden, New Jersey, for a number of years last past. That the said Consolidated Talking Machine Company under which this deponent is conducting his talking machine business has no connection whatsoever with the Consolidated Talking Machine Company of America, which is a corporation, as this deponent is informed and believes, existing under the laws of the State of New Jersey.

This deponent has recently been sued in the United States Circuit Court for the Eastern District of Pennsylvania by the said Consolidated Talking Machine Company of America, of October Sessions, 1900, No. 18, returnable the first Monday of December, 1900, in a suit in equity to restrain this deponent from using the said title or name Consolidated Talking Machine Company, which suit is still pending and unadjudicated.

That this deponent has used on his circulars the word "gramophone" in describing the said talking machine which he is making, for the reason that he believes and avers that he had a right to use the name of the particular style of disk talking machine which he was manufacturing; this defendant is informed and believes that certain suits are now pending in the United States Circuit Court of the Southern District of New York, brought by the Berliner Gramophone Company and United States Gramophone Company against the National Gramophone Corporation to restrain it from using the word "gramophone" in its corporate title and in advertising its goods, which said corporation is controlled by the said Frank Seaman and was organized by him for the purpose of selling gramophones, though under his agreement with the said Berliner Company of October 10, 1896, he had no right whatsoever to assign his said license or grant any rights thereunder, and this deponent believes that the said Frank

Seaman, the complainant in this case, is estopped from contesting this deponent's rights to the use of the word "Gramophone"; that the said suit last referred to in the Southern District of New York has only recently been filed, and no adjudication has been entered.

This deponent further states that the said complainant, Frank Seaman, has no rights whatsoever in the premises to restrain this defendant from the use of the word gramophone, and that the only parties who would have any standing in court to restrain this defendant, if any rights they have whatsoever in the premises, are the Berliner Gramophone Company and the United States Gramophone Company, and this deponent further states that the said Berliner Gramophone Company has already filed a bill in equity in the U. S. Circuit Court of the Eastern District of Pennsylvania against this defendant to restrain him from using the word "Gramophone," said suit being of the October Term, 1900, No. 17, returnable the first Monday of December, 1900, and in which case this defendant has entered an appearance.

This deponent is ready and willing to abide by and conform to the decree of the Court if the Court shall decide that the word "Gramophone" is the exclusive property of the complainants in the above mentioned suit. That the Berliner Gramophone Company and the U. S. Gramophone Company have not as yet had this right adjudicated to them, and until such adjudication this deponent cannot be restrained. The said Seaman certainly has no standing in this Court.

This deponent never knew whether the gramophone patents referred to in the Bill of Complaint as belonging to the United States Company and Berliner Gramophone Company were good and valid, and never was in a position to make the statement that they were valid, such as is attributed to him in the affidavits of Complainant, such as in the affidavits of O. D. LaDow and C. S. Hall, and that he never knew whether the said patents of the said companies could be successfully assailed, or not. This deponent is informed that these patents have never been adjudicated, but that sev-

eral suits are pending in the United States courts against Mr. Seaman's companies, the National Gramophone Corporation, and the Universal Talking Machine Company, to restrain them from infringement of the said Berliner Gramophone patents, which suits have not, as yet, been decided. This deponent, while never admitting the validity of the said patents, as he never knew, and does not know, whether the same are valid, stands ready and willing to abide by any decree of court which may decide, in any suit brought against him for infringement of these patents to properly test this question, when the patents shall have been adjudicated to be valid in such suits brought by the owners of the patents for this purpose.

This deponent further states that he has expended many thousands of dollars in the manufacture of talking machines and talking machine records for his business carried on under the title of Consolidated Talking Machine Company, and has spent many thousands of dollars in advertising the said goods; that besides a large laboratory, shop and clerical force he has employed a large force of travelling men throughout the country for the purpose of selling his goods, and is under an enormous expense; this deponent further states that he has large orders of goods now in transit about being delivered, and large orders for goods in the course of manufacture not filled, and that to enjoin this defendant at this time by continuing the restraining order or, by granting a preliminary injunction, would damage this deponent's said business to the extent of many hundreds of thousands of dollars, and irreparably damage and injure his business and damage and injure the business of this defendant and to a much more and material extent than would the complainant be injured by this deponent continuing his said business. This deponent further avers that he is informed and believes that the said Frank Seaman is not responsible financially, and has little or no property in his own name, and that this deponent ultimately, should he secure judgment against the said Frank Seaman, would not be able to collect the accounts of the said judg-

ment from the said Frank Seaman; that this deponent believes that the said Frank Seaman is irresponsible financially.

This deponent further states that the said Frank Seaman is not, under his own name, selling any talking machines or talking machine goods, and has not been for several months last past, and has not sold gramophones, as this deponent is informed and believes, under his own name, since the Berliner Gramophone Company gave the said Frank Seaman notice of the termination of his contract of October 10, 1896, a few months ago.

This deponent denies that any employees of the Berliner Gramophone Company, as alleged in complainant's affidavits, were ever sent to his laboratory for the purpose of assisting in the manufacture of matrices or making records, or for the purposes of assisting in the manufacture of records, but states that two of the employees of the said Berliner Company, Calvin G. Child and William H. Nafey, were admitted to his laboratory, while they were in the employ of the said company, as a courtesy on the part of this deponent, for the purpose of familiarizing themselves with the process of this deponent of making sound records, and denies that the said employees of the Berliner Company, or any employees of the Berliner Company, were ever admitted to his laboratory for the purpose of assisting in the manufacture of matrices. This deponent, however, did allow the Berliner Company to have certain records pressed for the said company by the Duranoid Manufacturing Company, of Newark, New Jersey, and did allow the said Child to select certain matrices from which he desired to have the said records pressed for the said Berliner Company.

This deponent further states that he never marked any gramophone goods manufactured by him with the number and date of any of the Berliner patents except in a few instances during the early stages of the manufacture by him he did, at the special request of the Berliner Gramophone Company, on certain goods manufactured by him for the said company, stamp on the sound box the date of one of Mr. Berliner's patents, and in a few instances he placed, at the

special request of the Berliner Company, the number and date of some of Mr. Berliner's patents on a certain style of motor case which was being made by him for the said company, but that this deponent has not so marked any of the said goods with the Berliner patents for some time past. It has been the practice, however, of the Berliner Gramophone Company, as this deponent is informed and believes, to mark all gramophones with the numbers of several of the Berliner patents upon the casing of the gramophones, but this marking was not done by this deponent, but by other parties employed by the Berliner Gramophone Company for the purpose.

That it has been the practice of this deponent as a manufacturing machinist in cases where he has been specially requested to stamp on goods manufactured by him the patent marks of his customer as indicated and designated by the customer in the same way that he would stamp a name plate according to the special instructions of the customer. This deponent further states that on certain matrices for making records manufactured by this deponent by his own process he placed the lettering "Patented in the United States and Foreign Countries" which certain matrices it was his intention to permit the Berliner Company to stamp some records from, as hereinbefore stated, and also to permit certain concerns in foreign countries to have the same privilege of stamping certain records from these matrices. From these matrices certain records were subsequently pressed by the Duranoid Company for the Berliner Company, and for said foreign concerns. That the lettering upon these matrices was so arranged thereon that it could be easily removed and this deponent did subsequently in many instances remove the said lettering from said matrices such as he desired to use for the purpose of stamping records for his own use and not for the use of the Berliner Gramophone Company. That the said lettering was placed upon the said matrices from which the Berliner Company desired to press some records at the special

request of the said Berliner Company; and that the said lettering was only placed on a comparatively few matrices.

That when this deponent first commenced the manufacture of Gramophones, Gramophone motors and parts several years ago, the models and machines submitted to him were very crude, and that since that time this deponent has greatly improved the Gramophone and has himself perfected it so that it has become the practical talking machine which it is to-day, and that this deponent has invented many improvements upon the Gramophone and talking machines in the last few years, and has had issued to him for his inventions and improvements many valuable patents relating to Gramophones, and that the perfected commercial Gramophone of to-day embodies a number of his valuable patented improvements. That the sound box, which is a most important feature of the Gramophone, and which has been used on all the commercial machines, for two or three years last past, was invented by and patented to this deponent, which letters patent are now owned and controlled by this deponent. That Frank Seaman, the complainant in this case, through the Companies which he has been instrumental in organizing and maintaining for the manufacture and sale of talking machines, to wit: The National Gramophone Corporation, and the Universal Talking Machine Company, has copied deponent's improved sound box, and is using it on the talking machines manufactured and sold by the said Universal Talking Machine Company and the National Gramophone Corporation for many months last past, and has been infringing this deponent's patents covering the same, for which infringements this deponent has entered suits in the United States Circuit Courts for the Eastern District of Pennsylvania, and in the Southern District of New York, which suits are now pending. That this deponent has invented a process for making records entirely distinct and apart from the Berliner process and has after much experimenting produced records which are superior to any here-

tofore produced. That this deponent has secured many patents of the United States and foreign Countries for his improvements relating to Gramophones, and has many valuable applications now pending in the United States Patent Office for other improvements relative to Gramophones and Talking Machines generally.

This deponent further states that he has read the affidavit of Waldo G. Morse, one of the attorneys for the said Frank Seaman in this cause, and emphatically denies the statements made by the said attorney for the said Frank Seaman, that he Eldridge R. Johnson, had his expenses paid by Thomas S. Parvin, president of the Berliner Gramophone Company, on a recent trip to Abingdon, Virginia, where he went to attend one of the hearings held at the said place in the suit of Frank Seaman v. the Berliner Gramophone Company, and states that all his expenses were paid by himself, and that he went at his own expense, for the reason that he understood that the said Frank Seaman was making an attempt, or was going to make an attempt, at the said hearing at Abingdon, Virginia, or at one of the hearings in the said Virginia suit, to try to implicate this deponent, and to attempt to join this deponent as one of the defendants in the said Virginia suit, and that the said Seaman was promulgating threats that he was by this means, or by other means, going to crush this deponent out of the Gramophone and Talking Machine business, and that the said Frank Seaman had previously had a notice served on this deponent of the motion to be made at the said hearing at Abingdon, Virginia, with a view of extending the decree of the Court previously entered against the said Berliner Gramophone Company, a copy of which said notice or order is marked complainant's "Exhibit E" (see page 75 of complainant's printed Exhibits). That for these reasons this deponent in his own defense went to Abingdon, Virginia, to attend the said hearing, before the United States Circuit Court, and employed special counsel, independent of the counsel of the Berliner Gramophone Company, to represent this deponent, and to defend him against any and all attempts which might

be made by the said Seaman, as threatened, to unjustly enjoin this deponent, in his attempt to drive him out of business. That for the purpose of setting the exact facts before the Court, this deponent executed certain affidavits to be used in the said Virginia suit, one of which is attached to the bill of complaint, and motion papers filed on behalf of complainant in the cause, and two of which said affidavits are hereto annexed, marked defendants' exhibits "G and H."

This deponent further states that the said motion of the said Frank Seaman in the said Virginia suit, to broaden and extend the decree in that case, of which motion this deponent had been served with notice, was refused by the Court October 19, 1900.

That notwithstanding the fact that the said Frank Seaman was unable in the said Virginia suit to connect this deponent with the said Berliner Company and to enjoin him from doing business, this deponent believes and avers that the said Frank Seaman is now endeavoring through the medium of this present suit to carry out his threat to drive this deponent out of the talking machine business, unjustly and without right.

This deponent further states that although the said Frank Seaman avers that this deponent is the only concern outside of the Berliner Gramophone Company which has been making use of the word "Gramophone" in connection with the sale of talking machines and talking machine records, he, the said Frank Seaman, is fully and well aware of the fact that the National Gramophone Corporation and the Universal Talking Machine Company, both of which are operated and controlled by the said Seaman, the complainant herein, which are engaged without any license in the manufacture and sale of talking machines and talking machine records, such as gramophones, and have for many months last past, been using the word "Gramophone" in connection with their talking machines, and talking machine records, and have been freely using the said word in their advertisements of their goods, which advertisements have been inserted in

most of the monthly magazines and extensively circulated through other mediums.

Since the Bill has been filed in this case against this deponent, and the restraining order issued, based upon the decree against the Berliner Gramophone Company entered June 25, 1900, in the suit of Frank Seaman, this complainant, against the said Berliner Gramophone Company in the United States Circuit Court for the Western District of Virginia, this deponent has carefully considered and examined the record in the said case. Among other things the defendant's record in the said case by its affidavits and exhibits shows clearly the relations and connection between the said Frank Seaman and the National Gramophone Company and its successor, the National Gramophone Corporation, and the Universal Talking Machine Company, showing the said companies and corporations to have been organized, operated and controlled by the said Frank Seaman for his own purposes, to wit, for the purpose of manufacturing and selling talking machines of the construction, style and character commonly known as the Gramophone, but which for his own purposes he has styled the Zonophone, and which he has through the said companies for some time past been selling and largely advertising, without any right or license from the Berliner Gramophone Company or the United States Gramophone Company, notwithstanding the fact that he is now in this suit against this deponent endeavoring by this suit to restrain this deponent from manufacturing, selling and advertising gramophones.

This deponent, therefore, prays leave to call your Honor's attention to some of the affidavits and exhibits of the defendant filed in the case of Seaman v. the Berliner Gramophone Company as are particularly directed to showing the relations and connections of Frank Seaman with the said National Gramophone Company, the National Gramophone Corporation, its successor, and the Universal Talking Machine Company.

This deponent would call your Honor's attention, among other of the said affidavits, to the affidavit of William Barry

Owen dated August 4, 1900, contained on pp. 92, 93, 94, of printed copy of affidavits of the defendant in the said case with exhibit thereto attached printed on the succeeding pages. Also to the affidavit of F. P. Dimaio, Jr., printed on page 121 of said defendant's affidavits; also to the affidavit of Calvin G. Child dated August 2, 1900, printed on pages 69 to 77 of the said defendant's affidavits. Attention is also called to the affidavit of Thomas S. Parvin on pages 1 to 14 of the same; also to the affidavit of Charles S. Lytle printed on pages 145 to 147 of the said defendant's affidavits; also to the affidavit of William Newcomb pages 102 to 108.

I attach herewith a copy of the affidavit of Charles H. Bartlett, marked "Exhibit I," which has been filed in the case of the American Graphophone Company *v.* the National Gramophone Company and Frank Seaman for the Southern District of New York, on the seventh day of September, 1900, a certified copy of which is ready in court to be produced.

This deponent further states that on May 5, 1900, a consent decree was signed and filed, in the case just referred to, by Mr. Seaman's company, the National Gramophone Company, by and with the connivance, as this deponent is informed and believes, of the said Frank Seamen and in an arrangement with the American Graphophone Company whereby the National Gramophone Company admitted the validity of the Graphophone patents in suit and had decree entered against it for the purposes, as this deponent believes, of furthering a plan of conspiracy of the parties to the decree in conjunction with the Universal Talking Machine Company for the purpose of injuring and destroying the gramophone and also of driving this deponent out of business. That the said above mentioned parties shortly after the entry of the said consent decree commenced jointly advertising that the gramophone was abandoned. That the said Frank Seaman through the said National Gramophone Corporation after the said consent decree, advertised in the magazines and by

various other mediums that the gramophone was abandoned and had been withdrawn.

Among other advertisements of this character of the complainant's company, the National Gramophone Corporation, I would refer to the following :

(Scribner's Magazine Advertiser for July, 1900.)

" ZON-O-PHONE.

Improved Gram-o-phone.

(Cut.)

Is substituted for the Gram-o-phone, which is abandoned, including its name.

The rights of the Zon-o-phone are exclusive under the joint protection of the patents of
National Gram-o-phone Corporation,
Universal Talking Machine Co.
American Graphophone Company,
Columbia Phonograph Company,

which companies have made an agreement between themselves for legal protection and commercial advantage. All persons selling any style of disc machines other than that sold by these corporations, will be prosecuted.

For Sale by dealers everywhere, including the Branches of the Columbia Phonograph Co. throughout the world.

*National Gram-o-phone Corporation,
Broadway, Cor. 18th St., New York City."*

Substantially similar advertisements were also published by the same corporation in other magazines, such as shown in " Defendant's Exhibit J," hereto attached.

Also in circular letter of May 10, 1900, mailed to the trade, such as shown in " Defendant's Exhibit K;" and in letter of May 18, 1900, of the National Gramophone Corporation to the trade, marked " Defendant's Exhibit L," hereto attached.

It will be noted that Mr. Frank Seaman's name appears

on this letterhead as treasurer of the National Gramophone Corporation.

I also attach hereto circular letter of October 26, 1900, signed by the National Gramophone Corporation, addressed to the trade, which is marked "Defendant's Exhibit M."

I would also call attention to affidavit of L. J. Etzel, contained on pages 100 to 101 of printed copy of affidavits for defendant in the said Virginia case of Seaman v. Berliner Gramophone Company.

I would also call attention to the affidavit No. 2 of Emmanuel Blout, and to the copies of Exhibits thereto attached, being letters of the said Frank Seaman addressed to the "Montreal Star", Canada, contained on pages 84, 85, 86 and 87 of defendant's printed affidavits in the Virginia case of Seaman vs. Berliner Gramophone Company, a copy of which affidavits is ready in court to be produced.

This deponent denies that the said Frank Seaman has any right to restrain, or to any way interfere with this complainant's manufacture and sale of gramophones, or to in any way interfere with this defendant's advertisements and trade in the said goods, and denies that the complainant has any rights under the Berliner patents to interfere with or restrain this defendant from manufacturing, selling and advertising gramophones, records and goods. This deponent denies that he is now, or at any time has been, connected with the United States Gramophone Company or the Berliner Gramophone Company other than as manufacturer of gramophones and gramophone goods for the Berliner Gramophone Company, and denies that he has at any time conspired or confederated with the said United States Gramophone Company and the Berliner Gramophone Company, or either of them, for the purpose of injuring the complainant, and denies that he has had anything to do with the incorporation or organization of the Consolidated Talking Machine Company of America, and that he has been connected with it in any way. This deponent never was in a position to cause the employees of the Berliner Company to be discharged, and never did

cause any of them to be discharged for the purpose of re-employing them himself, or for any other purpose. This deponent, however, did employ, and is still employing, about five gramophone experts who were formerly in the employ of the Berliner Company, after they had been discharged by the Berliner Company, and were seeking positions.

And this deponent denies that the complainant is now, or ever has been, by any unlawful act of this deponent in any manner injured or damaged.

This deponent, since the restraining order issued against him by this Honorable Court on October 22, 1900, and since the date that the restraining order was modified on October 26, 1900, has observed and obeyed most carefully the order of this court.

This deponent avers that the said restraining order of October 26, 1900, is as shown by the facts set forth in this deponent's affidavits in this motion, most unjust, and is greatly and irreparably damaging and injuring this deponent's business. That this deponent at the time said restraining order was issued did not have the same opportunity which he now has to present to this Honorable Court the evidence and facts concerning the allegations made by the complainant, and believes and avers, in view of the facts as herein presented, that the motion for Preliminary Injunction should be dismissed, and that this deponent should be relieved of the restraint which has been placed upon him and his business, unlawfully and unjustly, to the great and irreparable damage and injury of this deponent, and that the costs hereof should be taxed upon the complainant.

Eldridge R. Johnson

ELDRIDGE R. JOHNSON.

Sworn and subscribed before me this 14th day of December, A. D. 1900.

Charles H. Speckman

CHARLES H. SPECKMAN,

Notary Public.

[SEAL]

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IN THE UNITED STATES CIRCUIT COURT,
Eastern District of Pennsylvania.

FRANK SEAMAN, <i>Plaintiff,</i>	}	October Sessions. 1900.
<i>v.</i>		In Equity.
ELDRIDGE R. JOHNSON, <i>Defendant.</i>		No. 20.

Affidavit of Calvin G. Child.

COMMONWEALTH OF PENNSYLVANIA, } ss.
COUNTY OF PHILADELPHIA,

CALVIN G. CHILD, being duly sworn according to law,
deposes and says as follows :

That I was employed by the Berliner Gramophone Company to take charge of their recording laboratory in January, 1899, and from that time to the middle of September, 1900, had charge of this work. At this time I was dismissed by the Berliner Gramophone Company owing to the fact that they had been enjoined from doing business ; that during this period from time to time I went to the laboratory of E. R. Johnson, at Camden, for the purpose of receiving instruction of the uses of certain improvements in sound recording devices that Mr. Johnson had developed in his said laboratory ; that I went to the laboratory of Mr. Johnson quite frequently from the middle of June, 1900, to the first of August, 1900, being sent there as a representative of the Berliner Gramophone Company to become familiar with the practical working of the said devices for recording sound ; that I employed various singers and musicians at the expense of E. R. Johnson to make records in the said laboratory with

a view to discovering just what the said devices and improvements would do when put to practical every day work ; that many of the experiments were so successful that as a representative of the Berliner Company I asked the said Johnson if we could not come to some agreement as to price at which these matrices could be sold to the Berliner Company ; that the said Johnson stated that he had no objection to having the matrices sent to the Duranoid Manufacturing Company and allowing the Berliner Company to have records pressed from them, but owing to the fact that no positive arrangement had been made as to the disposition of these new recording devices the said Johnson was not willing then to sell any of the said matrices ; that to my own knowledge all money expended for singers and musicians to make these records was paid by Mr. Johnson ; that so far as he was concerned I was free to come and go when I pleased and I distinctly understood that I was given free access to his laboratory merely as an act of courtesy to the Berliner Gramophone Company.

That after the Berliner Gramophone Company closed their factory I asked Mr. Leon F. Douglass if he could secure a position for me with Mr. Johnson, and about the last week in September the said Douglass notified me that Mr. Johnson had given him authority to engage me to take charge of the making of records in the said Johnson's personal laboratory.

CALVIN G. CHILD.

Calvin G. Child

Sworn to and subscribed before me this fourteenth day of December, A. D. 1900,

Charles H. Speckman

CHARLES H. SPECKMAN,

Notary Public.

[SEAL]

IN THE UNITED STATES CIRCUIT COURT,
Eastern District of Pennsylvania.

FRANK SEAMAN, <i>Plaintiff.</i>	}	October Sessions, 1900.
v.		In Equity.
ELDRIDGE R. JOHNNSON, <i>Defendant.</i>		No. 20.

Affidavit of William H. Nafey.

COMMONWEALTH OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILADELPHIA.

WILLIAM H. NAFEY, being duly sworn according to law, deposes and says that about March, 1899, he was employed by the Berliner Gramophone Company as an Expert in its laboratory for the purpose of experimenting with and improving Berliner Gramophone records and continued to be so employed by the said Berliner Gramophone Company at Tenth and Lombard Streets, Philadelphia, until about the early part of September, 1900, when he was discharged by the Berliner Company by reason of the fact that an injunction had been issued against the said Company restraining it temporarily from doing business. That about the middle of September, 1900, after his discharge from the Berliner Company, he sought employment with the Eldridge R. Johnson, the defendant in the above entitled case, and that since that time he has been employed by the said Johnson at his laboratory at his factory, No. 120 North Front Street, Camden, New Jersey.

That prior to his discharge from the Berliner Company he was familiar with all of the details of its record making, and that he and Calvin G. Child, also employed by the Ber-

liner Company, were occasionally sent over to the laboratory of Eldridge R. Johnson to familiarize themselves with the work which was being done by the said Johnson in his record making process at his laboratory, and that the visits of this deponent and the said Child to the laboratory of the said Johnson were not for the purpose of assisting the said Johnson in manufacturing records, but for the purpose of receiving instructions in record making; that this deponent and the said Child were the only employees of the Berliner Gramophone Company who were sent by the Berliner Gramophone Company to the laboratory of the said Johnson, and were the only employees of the Berliner Gramophone Company who were admitted by the said Johnson to his laboratory.

That while this deponent was at the laboratory of the said Johnson he was not there for the purpose of assisting in making matrices for records or assisting in any of the work in the making of sound records, but was there for the sole purpose of learning the record process of the said Johnson in the manufacture of records.

That while the matrices belonged to the said Johnson, the said Johnson permitted the Berliner Company to have copies of the records made from such of the said matrices by the Duranoid Company as the said Child should select for submission to the Berliner Company.

This deponent further states that it was always his understanding that the said laboratory of the said Johnson, and all the appliances therein, belonged to the said Johnson, as well as all the matrices which the said Johnson made in the said laboratory.

William H. Nafey

WILLIAM H. NAFEY.

Sworn to and subscribed before me this 14th day of December, A. D. 1900.

Charles A. Chapman
~~Aurora E. Noyson~~

[SEAL.]

Notary Public.

IN THE
UNITED STATES CIRCUIT COURT,
Eastern District of Pennsylvania.

FRANK SEAMAN,	} Oct. Sessions, 1900. In Equity. No. 20.
<i>Plaintiff,</i>	
<i>v.</i>	
ELDRIDGE R. JOHNSON,	
<i>Defendant.</i>	

Affidavit of Thomas S. Parvin.

COMMONWEALTH OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILADELPHIA. }

THOMAS S. PARVIN, being duly sworn according to law, deposes and says that he is and has been since the organization of the company, the president of the Berliner Gramophone Company, and is familiar with all the details of its business; that he knows Eldridge R. Johnson, the defendant in the above entitled suit, and states that the said Berliner Company has for several years past purchased motors and other parts for gramophones from the said Eldridge R. Johnson, who is a large manufacturer having his factory located in Camden, New Jersey. The said Eldridge R. Johnson was never connected with the Berliner Gramophone Company in any way other than as manufacturer and customer, and was entirely independent, separate, and apart from the organization of the Berliner Gramophone Company. The said Johnson was never connected with the United States Gramophone Company.

This deponent further deposes and says that the said Eldridge R. Johnson has not in his possession any goods the

property of the Berliner Company, with the exception of one second-hand piano and an old recording machine, which was sent to the said Johnson for the purpose of being repaired, that the said Johnson has no talking machine records, or matrices for making the same, or patterns or tools, or any other property belonging to the Berliner Gramophone Company, with the exception of the articles above noted.

Thos. S. Parvin THOS. S. PARVIN.

Sworn to and subscribed before me this 14th thday of December, A. D. 1900.

Charles H. Speckman
CHARLES H. SPECKMAN,
Notary Public.

[SEAL]

IN THE
CIRCUIT COURT OF THE UNITED STATES,
Eastern District of Pennsylvania.

FRANK SEAMAN,	} October Sessions, 1900.
<i>Plaintiff,</i>	
v.	
ELDRIDGE R. JOHNSON,	} No. 20.
<i>Defendant.</i>	
	In Equity.

Affidavit of Max H. Biernbaum.

COMMONWEALTH OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA. } ss.

MAX H. BIERNBAUM, being duly sworn according to law, deposes and says that he was the Secretary of the Berliner Gramophone Company from October, 1895, to October, 1900, when he resigned, and during that period of time was familiar with all the details of its business; that he knows

Eldridge R. Johnson, the defendant in the above entitled case, and states that the said Eldridge R. Johnson for several years last past has manufactured for the Berliner Company upon its order given from time to time gramophones and parts in large numbers; that the said Eldridge R. Johnson has an extensive establishment in Camden, New Jersey, for manufacturing machinery and machine devices and parts generally, and has been engaged in the said business for many years last past.

That the said Eldridge R. Johnson was never connected with the Berliner Gramophone Company in any other way than as manufacturer and customer, and was entirely independent and separate and apart from the organization of the Berliner Gramophone Company, and has always acted independently of it.

The said deponent further states that the said Eldridge R. Johnson had not, at the time of this deponent's resignation from the company in his possession any goods the property of the Berliner Gramophone Company with the exception of one second hand piano and an old recording machine which was sent to the said Johnson by the Berliner Gramophone Company for the purpose of being repaired. That to this deponent's knowledge the said Johnson at that time had no talking machine records, or matrices for making the same, or patterns or tools, belonging to the Berliner Gramophone Company with the exception of the articles above noted, and has not at the present time as far as this deponent has knowledge.

Max H. Biernbaum MAX H. BIERNBAUM.

Sworn and subscribed before me this fourteenth day of December, A. D., 1900.

Charles H. Speckman
CHARLES H. SPECKMAN,

[SEAL]

Notary Public.

IN THE UNITED STATES CIRCUIT COURT,
Eastern District of Pennsylvania.

FRANK SEAMAN,	}	October Sessions, 1900.
<i>Plaintiff,</i>		
v.		No. 20.
ELDRIDGE R. JOHNSON,	}	In Equity.
<i>Defendant.</i>		

Affidavit of Edward Winnemore.

COMMONWEALTH OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILADELPHIA.

EDWARD WINNEMORE being duly sworn according to law, deposes and says that he is the Secretary of the Berliner Gramophone Company, and has been since the 19th day of October, 1900. That since that period of time he has been familiar with the details of the business of the said Company; that he knows Eldridge R. Johnson, the defendant in the above entitled case, and states that the said Eldridge R. Johnson is a large manufacturer, having his factory located in Camden, New Jersey, and besides manufacturing gramophones and parts has a large general manufacturing business.

This deponent states that the said Johnson has not, to this deponent's knowledge, in his possession any goods the property of the Berliner Gramophone Company with the exception of one second-hand piano and an old recording machine which is at his factory for the purposes of repair; that the said Johnson has no talking machine records or matrices for making the same or patterns or tools, or any other property, to this deponent's knowledge, belonging to the Berliner Gramophone Company with the exception of the articles above noted.

Edward Winnemore

EDWARD WINNEMORE.

Sworn and subscribed before me this fourteenth day of December, A. D., 1900.

Charles H. Speckman
CHARLES H. SPECKMAN
Notary Public.

[SEAL]

IN THE UNITED STATES CIRCUIT COURT,
Eastern District of Pennsylvania.

FRANK SEAMAN,	} October Session, 1900.
<i>Plaintiff,</i>	
<i>v.</i>	
ELDRIDGE R. JOHNSON,	} No. 20.
<i>Defendant,</i>	
	In Equity.

Affidavit of Albert B. Weimer.

COMMONWEALTH OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA, } ss.

ALBERT B. WEIMER, being duly sworn according to law, deposes and says that he is one of the counsel for the defendant in the suit brought by Frank Seaman against the Berliner Gramophone Company in the United States Circuit Court for the Western District of Virginia, referred to in the bill and affidavits filed in the above entitled cause, and he is familiar with all the proceedings in the said Virginia suit, and is familiar with the decrees entered by Judge PAUL in the said case.

This defendant further states that the complainant, Frank Seaman, not being satisfied, apparently, with the decree entered by Judge PAUL, June 25, 1900, made further application to the Court in the said Virginia suit for the purposes of enlarging the said decree of June 25, 1900. This deponent further states that the said application of the said complainant for enlarging the said decree was refused by the said United States Circuit Court for the Western District of Virginia, on October 19, 1900.

ALBERT B. WEIMER.

Sworn and subscribed before me this fourteenth day of December, 1900.

CHARLES H. SPECKMAN,

Notary Public.

[SEAL]

EXHIBITS.

"Defendant's Exhibit A."

PHILADELPHIA, PA., March 25, 1898.

BERLINER GRAMAPHONE COMPANY,
1026 Filbert Street, Phila.

Gentlemen :

My attention has been called by my client, Mr. Eldridge R. Johnson, to a Gramophone Motor manufactured as we, are informed by the Montross Metal Shingle Company, of Camden, New Jersey. We understand that this machine is being manufactured by the said Montross Company for your Company in considerable numbers.

I would say I have compared the construction of the Montross Motor with Letters Patent, 601,198, issued to the said Eldridge R. Johnson, March 22, 1898, for Improvement in Gramophone and Actuating Devices therefor, and that I find that the construction of the said motor clearly infringes the claims of the said Johnson patent.

Please take notice that unless this infringement is promptly desisted from by your company, and the sale and use of the same at once stopped, we will be obliged, in order to protect our rights in the matter, to promptly institute the necessary proceedings in the U. S. Circuit Court of this District to enjoin the manufacture, sale and use of the same, and to compel an accounting for the said infringement.

Will you kindly let me have your reply as to what course you mean to take in the premises on or before Wednesday next, March 30th.

Yours very truly,

HORACE PETTIT.

"Defendant's Exhibit B."

Frank J. Dunham, Orville D. LaDow, Frank Seaman,
President. Sec'y & Gen'l Manager. Treasurer.

*NATIONAL GRAM-O-PHONE
CORPORATION.*

(Cut) 874 Broadway,
cor. 18th St

NEW YORK, May 18th, 1900.

J. T. ELLIS & Co.
Washington, D. C.

Dear Sir :—

We make the following statement for the benefit of all concerned :

The National Gram-o-phone Corporation and the Universal Talking Machine Company have formed an alliance with the American Graphophone Company and the Columbia Phonograph Company for the mutual advantage and protection of the disc talking machine trade.

On May 5th a decree was entered by Judge Lacombe, of the United States Circuit Court, decreeing the talking machine Gram-o-phone to be an infringement of the Graphophone patents. The Gram-o-phone is therefore abandoned, and the infringing features heretefore found by Judge Lacombe in his decision granting a preliminary injunction, are by this joint agreement at the disposal of the National Gram-o-phone Corporation.

The various patents of the above alliance are now merged in a new disc-machine to be known as the Zon-o-phone, which becomes the 1900 model of the Gram-o-phone Corporation, and is now ready for the market.

The rights of the National Gram-o-phone Corporation therein are absolute and exclusive, and the rights of the trade to deal in the Zon-o-phone are conceded by all parties. The rights of the Zon-o-phone being exclusive, the alliance will

operate jointly in defending and enforcing such rights against every other form of disc-machine.

Graphophone suits against dealers in Gram-o-phones will be withdrawn in cases where the sale of the infringing machine is abandoned and the Zon-o-phone substituted therefor.

The continued sale of the Gram-o-phone will entail prosecution.

Blanks for an agreement to these conditions will be provided.

The National Gram-o-phone Corporation will make special arrangements for the exchange of Gram o-phones for Zon-ophones, and is authorized to make arrangements for the disposition of Gram-o-phones now on hand. For the Graphophone Co., they recognize the Zon-o-phone—its superior merits as a machine, and its undisputed legal status—by placing it on sale in connection with Graphophones, at their principal stores throughout the world.

The Zon-o-phone will please you immensely. It's new, it's novel, it's handsome, it's artistic, it's something to talk about; it's free from patent litigation, it's work is ten times better than a Gram-o-phone, it's the talking machine of the times.

The Zon-o-phone is made in three types: Type A, with the bevelled plate glass sides and brass horn, \$25; Type B, with quartered oak sides and brass horn, \$22.50; Type C, including all Zon-o-phone improvements, furnished with heavy Japanned horn, \$18.00.

In conclusion, we congratulate the trade on the final disposition of this question, and bespeak for the operations of the alliance abundant success and freedom from future annoyance on the subject of patent litigation.

Very respectfully,

NATIONAL GRAM-O-PHONE CORPORATION.

O. D. LaDow.

B.

Secretary.

"Defendant's Exhibit C."

Cable Address "Framan"

Telephone Numbers :

874 Broadway, 1261-18th St.,
1265 Broadway, 2322-38th St.

(cut)

FRANK SEAMAN,
GENERAL ADVERTISING, F. C.
Gram.

Branches,

Main offices :

Allen Advertising Agency
1265 Broadway,

874 Broadway, New York,
May 18, 1900.

Chicago Office, 69 Dearbon Street.

Mr. E. R. Johnson,
108 North Front Street,
Camden, N. J.

Confidential.

My dear Johnson :

Have you any idea how much the Berliner people would pay me for my contract with them? If you can give me an idea, and the amount is what I consider fair, I will communicate with England in reference to being relieved of my option.

I intended to say to you before you left me the other night and forgot it—that I feel quite confident that the directors of the National Gramophone Corporation have no prejudice against you and nothing but the best of feeling for you, outside of the fact that they look upon you as against their interests whenever the Berliner Gramophone Company desire or request you to act with them.

One of the officials of the National Gramophone Corporation said to me the other day that he understood that the Berliner Gramophone people were preparing to put a \$10.00 Machine on the market, this being the reason why they declined to fill my orders for Gramophones. For several reasons, I believe this would be a serious mistake, one of these reasons being that it would probably be met by a

150

similar priced machine of some of the competitors ; and the public only would be benefited thereby. They have absolutely cut off my supply of both machines and records and I have been unable for some time to fill any orders.

Yours very truly,

(Dictated by F. S.)

FRANK SEAMAN.

—
"Defendant's Exhibit D."

Cable Address, "Framan"

Telephone Numbers :

874 Broadway, 1261-18th St.

1265 Broadway, 2322-38th St.

(cut)

FRANK SEAMAN,
GENERAL ADVERTISING.

F. C.

Main Offices :

Branches : Broadway, New York, Feb. 14, 1900.

Allen Advertising Agency, 1265 Broadway,

Chicago Office, 69 Dearborn St.

MR. E. R. JOHNSON,

108 North Front St.,

Camden, N. J.

My Dear Johnson :

In reply to yours of February 9th, I think you misunderstood the meaning I intended to convey by the word "demand" in my letter to you in connection with the \$100,000. I did not mean this at all in an offensive way—simply that you and Mr. Parvin considered this amount should be paid in cash for the patents which you control, and which was all right from your standpoint, although I felt confident that I could not carry it through from this end. You frankly stated that you were indifferent whether you

came in or not, so I simply let the matter drop. As I said to you at the time, it could be taken up a little later on, provided the other deal should go through. I suppose it could be worked out to the satisfaction of all parties, on the lines which you suggest, that is:—after the amount has been agreed upon, the transfer not actually to be made until the stock has been quoted, and you have the opportunity to sell at some given figure. This seems perfectly reasonable to me.

I have never claimed that you made a fortune out of me—in fact I never thought so. I have, however, believed that you were making a good thing, in fact a very good thing, out of the Gramophone business, and that the prices which you have been paid for your parts are reasonably high; but I made no objection to this so long as I got the goods. I fully agree with you that the quality of the machine must be improved over anything that we have yet put out.

As to your explanation of the receipt by me of such a small number of machines during October, November and December, 1899, I beg to say that I understand from the Berliner Gramophone Company, in fact they state quite clearly, that it was due solely to the imperfect condition of the machines received from you—that they could not conscientiously pass them, and that certainly caused me to lay the blame entirely upon you. To be perfectly frank with you, I believe you are trying to put as cheap material as possible—as cheap as will pass inspection—into the machines; but I don't blame you for this, as you naturally want to make all the money you can out of them; and I regret to learn from you that you have been losing money on the late deliveries.

I believe you do Mr. LaDow an injustice in stating that he evidently has been working to "down" your machine in favor of the machine made by the Universal Company. He has not hesitated to state, and I believe he is correct, that the Universal Company's machine is a finer piece of mechanism than yours; but I had no thought of having them build any machines for me until I was placed in such a terrible plight this last Fall by your non-delivery, and until my last order,

specifying certain deliveries, was declined. I wanted to get a small quantity of other machines during the Holiday time to retail at \$25.00 or \$30.00. I need a more expensive machine; it has been promised me for more than a year.

Sorry I cannot accept your invitation to run over and see your factory this week. I hope to later on, but have a lot of things on hand this week which will prevent my being away from the office.

Yours very truly,

(Dictated by F. S.)

FRANK SEAMAN.

"Defendant's Exhibit E."

Cable Address "Framan"

Telephone Numbers:

874 Broadway, 1261-18th St.
1227 Broadway, 183 B-38th St.
20 New Street, 1732-Cort'dt.

FRANK SEAMAN,
(cut) GENERAL ADVERTISING.

F. C.

Main Offices:

Branches: 874 Broadway, N. Y., June 5, 1897.
Financial Offices 20 New Street.
Allen Advertising Agency, 1227 Broadway.
Chicago Office, 79 Dearborn Street.

MR. ELDRIDGE R. JOHNSON,
108 North Front Street,
Camden, N. J.

Dear Sir:

In reply to yours of the first inst., addressed to the National Gramophone Company, acknowledging receipt of their order for five thousand (5,000) motors for the new No. 25 Gramophone—I beg to say that I personally guarantee to

you, that the National Gramophone Company will pay you all sums justly due you for goods furnished under said contract; and in order that I may at all times be personally cognizant of such amounts, I require that all orders for goods shall be acknowledged by me.

I herewith acknowledge the order for the first one thousand (1,000) machines given in their letter of May 28th.

Yours very respectfully,

FRANK SEAMAN.

(Dictated by Frank Seaman).

If the (N. G. Co.) use the 5000 machines as agreed it is to have the privilege of purchasing your patents allowed or applied for, any time within ten months for \$2000 for U. S. rights only.

FRANK SEAMAN.

“Defendant’s Exhibit F.”

(Copy of Modified Order.)

IN THE
CIRCUIT COURT OF UNITED STATES,
In and for the Eastern District of Pennsylvania.

FRANK SEAMAN,

Plaintiff,

v.

ELDRIDGE R. JOHNSON,

Defendant.

Oct. Sessions, 1900.

No. 20.

In Equity.

October 26th, 1900, the restraining order granted October 22d, 1900, is hereby modified so as to read as follows:—The other matters covered by the original order to stand over for consideration upon a motion for a preliminary injunction if the Complainant, shall be advised to make such motion:—

And now October 22d, 1900, upon motion of the plaintiff, Frank Seaman by Russell Duane and Waldo G. Morse, his attorneys, and upon the reading of the plaintiff's bill in said cause this day filed and properly verified and upon the affidavits of Waldo G. Morse, Henry K. Smith and Charles S. Hall filed therewith and duly verified and also certain exhibits filed therewith verified by affidavit, this Court doth grant and award a restraining order pursuant to the Act of Congress in such case made and provided, restraining the said defendant, Eldridge R. Johnson, his servants, employes and agents and all other persons claiming to act under his authority, until the hearing of this case before the Court at a time to be hereafter set, and due notice thereof given to the defendant, from manufacturing, buying, selling, giving away, delivering or trading with any of the gramophone records matrices, machinery or appliances for the production thereof which are the property of the Berliner Gramophone Company or which were made by him for the Berliner Gramophone Company, or which were made with patterns, designs, models, forms or machinery paid for in whole or in part by Berliner Gramophone Company and that the defendant, his servants, agents, or employes, pending said hearing, be further restrained from advertising to sell or give away any of the gramophones, gramophone records or goods, covered by this restraining order.

And this Court doth further order and rule that upon said Bill and affidavits and such other and further affidavits as may be filed with the Court on or before the 30th day of October, 1900, the defendant show cause if any there be, why the aforesaid restraining order should not be had and continued until the final hearing and determination of this cause.

And let a copy of this order and of said Bill be served upon the defendant aforesaid the same to accompany the subpoena prayed in said Bill.

By the Court.

"Defendants' Exhibit G."

IN THE
CIRCUIT COURT OF THE UNITED STATES,
Western District of Virginia.

FRANK SEAMAN,	}	In Equity.
<i>Complainant,</i>		
v.		
BERLINER GRAMOPHONE COMPANY,	}	
<i>Defendant,</i>		

Affidavit of Eldridge R. Johnson.

COMMONWEALTH OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA. } ss.

ELDRIDGE R. JOHNSON, being duly sworn according to law, deposes and says that he is a resident of the city of Philadelphia, State of Pennsylvania; that he is a manufacturing machinist and has for about eight years last past been actively conducting his business in Camden, New Jersey, in the manufacture of machines and machinery generally; that during the last few years he has manufactured in connection with his general business spring motors for gramophones and other parts for gramophones for the Berliner Gramophone Company; that the relations between this deponent and the Berliner Gramophone Company have been those of manufacturer and customer, and that all the goods manufactured for the Berliner Gramophone Company have been on this basis; that the Berliner Gramophone Company does not own or control any interest in any patents which have been issued to this deponent; that this deponent did at one time transfer a certain interest to the Berliner Gramophone Com-

pany in a certain unpatented process relating to the Making of Records for Talking Machines, which process, however, the Berliner Company did not succeed in making a practical success of, and which process is not now being used either by the Berliner Gramophone Company or this deponent.

That this deponent denies the allegation made by Henry K. Smith, of Philadelphia, in an affidavit for use in this case, dated the day of September, 1900; that when he, this deponent, began building machines for the Berliner Company that he made any arrangement or agreement with the said Berliner Company that all patents should be kept in his name and not assigned to the Berliner Company; that the Berliner Company had no title or interest in this deponent's patents or inventions, save in the unpatented process, hereinbefore referred to, and that the said Berliner Company had no claims or demands whatsoever upon this deponent outside of the said process referred to for any of his inventions or patents or interests therein; that all changes in models and machinery relative to the construction of motors and gramophones were made at the deponent's own expense, and were not billed or charged to anyone.

This deponent further avers that the Berliner Gramophone Company is not now or never did conduct experiments at his factory or place of business, but that all work done for the Berliner Gramophone Company was done by this deponent in the regular course of business in the same manner that he would experiment for and build machines and parts for any customer in his regular line of business; this deponent further says that the laboratory and shop used for the purpose of constructing gramophone parts belongs to and is the exclusive property of this deponent, and always has been, with the exception of one or two small machines and parts which were sent to this deponent's factory by the Berliner Company some time ago for repair.

This deponent denies that the Berliner Gramophone Company have paid any attorney's fees for obtaining patents which

have been issued to this deponent; that the only expense of this character which they have paid were relative to the recording process hereinbefore referred to.

This deponent denies, as averred by the said Henry K. Smith, that he at any time was lending his influence on behalf of the Berliner Gramophone Company looking to a cancellation of its contract with Frank Seaman, but avers that whatever efforts he may have used at any time were all with the intention and looking toward the maintaining of harmonious relations, though it ultimately became quite apparent to this deponent that the said Frank Seaman had no intention of keeping his said agreement with the Berliner Gramophone Company in good faith.

ELDRIDGE R. JOHNSON.

Sworn to and subscribed before me this day
of , A. D. 1900,

"Defendant's Exhibit H."

IN THE UNITED STATES CIRCUIT COURT,
Western District of Virginia.

FRANK SEAMAN,	} Plaintiff,	In Equity.
v,		
BERLINER GRAMOPHONE COMPANY,		
	} Defendant	

Affidavit of Eldridge R. Johnson.

COMMONWEALTH OF PENNSYLVANIA, } ss.
CITY AND COUNTY OF PHILADELPHIA.

ELDRIDGE R. JOHNSON, being duly sworn according to law, deposes and says that he is a resident of the City of Philadelphia, State of Pennsylvania, and is and has been for a num-

ber of years last past a manufacturing machinist, having a factory located in Camden, New Jersey. That he has recently become engaged on his own account, independently and separately and apart from any other party, corporation or concern, in the manufacture of Talking Machines, Sound Records and Talking Machine Accessories, and has adopted in this connection for his talking machine business the name or style of Consolidated Talking Machine Company, which has no connection in any manner or form with a certain corporation which this deponent is informed exists, though has never done any business, the Consolidated Talking Machine Company of America. That through an oversight or mistake the name Consolidated Talking Machine Company of America was attached to one of this deponent's advertisements, which has appeared in the October, 1900, issue of "Scribners' Magazine," and also in one or two others, instead of the name Consolidated Talking Machine Company, which name and style this deponent has adopted, as hereinbefore set forth, for use in connection with his talking machine business, and to which name and style he claims to have a full and perfect right.

This deponent further states that neither the Berliner Gramophone Company nor any of its officers has any interest in or connection with the Consolidated Talking Machine Company, and never did have, and that the said concern and business is owned, operated and controlled, solely by this deponent.

ELDRIDGE R. JOHNSON,

Sworn and subscribed before me this day
of September, A. D. 1900,

"Defendants' Exhibit I."

CIRCUIT COURT OF THE UNITED STATES,
For the Southern District of New York.

<p><i>The American Graphophone Company,</i> <i>Complainant,</i></p> <p style="text-align: center;"><i>v.</i></p> <p><i>National Gramophone Company, and Frank</i> <i>Seaman, Defendants.</i></p>	}	In Equity.
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SUR MOTON TO WITHDRAW DEFENDANTS' RECORD
AND APPEARANCES FROM CASE.

Affidavit of Charles H. Bartlett.

COMMONWEALTH OF PENNSYLVANIA, }
CITY AND COUNTY OF PHILADELPHIA. } ss.

CHARLES H. BARTLETT, being duly sworn according to law, deposes and says as follows: From September, 1898, to May, 1900, I was employed by the National Gramophone Company and the National Gramophone Corporation, its successor, as a stenographer and typewriter at 874 Broadway, third floor of the McIntyre Building. The National Gramophone Corporation was organized about March, 1899, and from that time until May, 1900, I was paid by the said corporation. Prior to that time I was paid by the National Gramophone Company. Although I received my salary from the said concerns I also did work for Frank Seaman personally, which was assumed to be, and which I considered, part of my business, and frequently attended to the writing of Mr. Frank Seaman's letters in connection with his

advertising business, which was his general business, and also personal correspondence of the said Seaman. The front portion of the third floor was divided by low partitions into three separate offices, the central portion or portion back of these partitions was used as the general office of the National Gramophone Company, back of this a portion was railed for the book-keepers and back of this railed off portion another portion was railed off occupied by the clerks of Mr. Frank Seaman employed to attend to his general advertising business, and the balance of the rear portion of this floor was used as the wholesale department of the National Gramophone Company and the National Gramophone Corporation, its successor. The larger office in the front of the building of the three hereinbefore referred to divided by low partitions was occupied by Mr. Frank Seaman as his main office where he conducted his general advertising business and communicated with the general office of the National Gramophone. Mr. O. D. LaDow occupied the smaller front office divided by a low partition from Mr. Seaman's office having a door communicating with Mr. Seaman's office; a small office to the rear of Mr. LaDow was occupied by Mr. W. T. Hepper, assistant manager of the National Gramophone Company, communicating with Mr. LaDow's office and communicating with the general office. When I first was employed here I occupied a desk in Mr. Hepper's office and shortly afterwards my desk was placed in the general office. For the purpose of performing my duties as stenographer and typewriter I was supplied with stationery having the heading of the National Gramophone Company thereon, another set of stationery having Frank Seaman's name thereon being his letterheads with his advertising agency noted thereon, and subsequently after the organization of the Universal Talking Machine Company I was supplied with a third set of stationery, being the letterheads of the Universal Talking Machine Company. Mr. Seaman dictated to me such letters as I had

to write for him in his own general advertising business and personal matters ; these I would write on the letterheads containing his name and advertising agency, which I kept separately in my desk, and Mr. LaDow or Mr. Hepper would usually dictate to me the letters concerning the National Gramophone Company's business which I would write upon the National Gramophone Company's paper, which I also kept separately in my desk for this purpose, and as a rule Mr. LaDow would dictate the letters to me relating to the Universal Talking Machine Company's business which I would write upon the letterheads of this company, which I also kept separately in my desk for the purpose.

It was always understood by the clerks of the office generally that Mr. Seaman was the moving and leading spirit of the National Gramophone Company and Corporation and that he was the general head of the business and guided and controlled the general policy of the business. That Mr. Seaman employed also relative to his general advertising business a book-keeper, a clerk and a boy who occupied the small railed-off portion used for this purpose hereinbefore referred to, to the rear of the general office, and in order to reach Mr. Seaman's office in the front these employees were obliged to pass through the central general office as would also Mr. Seaman in going from his private office where he conducted his general advertising business to the said railed-off portion in the rear.

CHAS. H. BARTLETT.

Sworn and subscribed before me this ninth day of November, 1900.

CHARLES H. SPECKMAN.

Notary Public.

[SEAL]

"Defendant's Exhibit J."

(Leslie's Weekly, August 4, 1900.)

ZON-O-PHONE.

Improved Gram-o-phone.

Our Latest Improved 1900 Model is substituted for the Gram-o-phone, which is abandoned, including its name.

The rights of the Zon-o-phone are exclusive under the joint protection of the patents of
National Gram-o-phone Corporation
Universal Talking Machine Co.
American Graphophone Company
Columbia Phonograph Company

which companies have made an agreement between themselves for legal protection and commercial advantage. All persons selling any style of disc machines other than the Zon-o-phone will be prosecuted.

*National Gramophone Corporation,
Broadway, Cor. 18th St., New York City.*

The following circular letter was also sent to the trade through the mails signed by the National Gram-o-phone Corporation :

"Defendant's Exhibit K."

Frank J. Dunham, Orville D. LaDow, Frank Seaman,
President. Sec'y & Gen'l Manager. Treasurer.

**NATIONAL GRAM-O-PHONE
CORPORATION.**

874 Broadway,
Cor. 18th St.

(Cut)

NEW YORK, May 10th, 1900.

To the Trade :

We have it at last—a new model machine for 1900, conceived from a knowledge of the needs of the trade and born with a perfection scarcely anticipated by ourselves. We have kept you waiting a long time, for which we are sorry; we have spent thousands of dollars in perfecting this gem, for which we are glad. "The end crowns the work." We have now something to show, something artistic, something to talk about, something to please, no matter how dainty the taste, musically or mechanically. Every imperfection of the older types have been eliminated. It is new from its name, the Zon-o-phone, to its ingenious winding gears and turn-table; it is much better than a Gram-o-phone in results, and infinitely better in conception, construction, design and workmanship. It is the handsomest talking machine on the market, of any make, and its work are on a par with its attractive appearance.

We have not overlooked anything, not even the legal side, for we have just closed arrangements with the American Graphophone Company by which the broad and basic patents of the Zon-o-phone are supplemented by all rights of the Graphophone patents, thus insuring our trade, for all time, freedom from any thought of litigation on account of infringement. The joint protection of all patents, so far as disc

machines are concerned, is given exclusively to the machines manufactured or sold by this corporation, thus giving to our output a legal protection never yet approached by any talking machine on the market, the Zon-o-phone becomes the talking machine *par excellence* in its own particular field.

The Zon-o-phone can be furnished in three types: Type A, with bevelled plate glass sides and brass horn, \$25; Type B, with quartered oak sides and brass horn, \$22.50; Type C, including all Zon-o-phone improvements, furnished with heavy Japanned horn, \$18.00.

Immediate delivery can be made, and your continued favors are respectfully solicited.

Very respectfully,

NATIONAL GRAM-O-PHONE CORPORATION.

Illustrated catalogue and confidential list to dealers are enclosed.

—

"Defendant's Exhibit L."

Frank J. Dunham
President.

Orville D. La Dow
Sec'y & Gen'l Manager.

Frank Seaman
Treasurer.

NATIONAL
GRAM-O-PHONE CORPORATION.

(Cut)

874 Broadway,
Cor. 18, St.

NEW YORK, May 18th, 1900.

Dear Sir:—We make the following statement for the benefit of all concerned:

The National Gram-o-phone Corporation and the Universal Talking Machine Company have formed an alliance with the American Graphophone Company and the Columbia

Phonograph Company, for the mutual advantage and protection of the disc talking machine trade.

On May 5th a decree was entered by Judge Lacombe, of the United States Circuit Court, decreeing the talking machine Gram-o-phone to be an infringement of the Graphophone patents. The Gramophone is therefore abandoned and the infringing features heretofore found by Judge Lacombe in his decision granting a preliminary injunction are by this joint agreement at the disposal of the National Gram-o-phone Corporation.

The various patents of the above alliance are now merged in a new disc-machine to be known as the Zon-o-phone, which becomes the 1900 model of the Gram-o-phone Corporation and is now ready for the market.

The rights of the National Gram-o-phone Corporation therein are absolute and conclusive, and the rights of the trade to deal in the Zon-o-phone are conceded by all parties. The rights of the Zon-o-phone being exclusive, the alliance will operate jointly in defending and enforcing such rights against every other form of disc-machine.

Graphophone suits against dealers in Gram-o phones will be withdrawn in cases where the sale of the infringing machine is abandoned and the Zon-o-phone substituted therefor.

The continued sale of the Gram-o-phone will entail prosecution.

Blanks for agreement to these conditions will be provided.

The National Gram-o-phone Corporation will make special agreements for the exchange of Gram-o-phones for Zon-o-phones, and is authorized to make arrangements for the disposition of Gram-o-phones now on hand. For the Graph-o-phone Co., they recognize the Zon-o-phone—its superior merits as a machine and its undisputed legal status—by placing it on sale, in connection with Graphophones, at their principal stores throughout the world.

The Zon-o-phone will please you immensely. It's new, it's novel, it's handsome, it's artistic, it's something to talk about; it's free from patent litigation, it's work is ten times better than a Gram-o-phone, it's the talking machine of the times.

The Zon-o-phone is made in three types: Type A, with bevelled plate glass sides, and brass horn, \$25; Type B, with quartered oak sides, and brass horn, \$22.50; Type C, including all Zon-o-phone improvements, furnished with heavy japanned horn, \$18.00.

In conclusion, we congratulate the trade on the final disposition of this question, and bespeak for the operations of the alliance abundant success and freedom from future annoyance on the subject of patent litigation.

Very respectfully,

NATIONAL GRAM-O-PHONE CORPORATION,

Secretary

—
"Defendant's Exhibit M."

Frank J. Dunham, Orville D. LaDow, Frank Seaman,
President. Secretary & Gen'l Manager. Treasurer.
Wm. T. Hepper,
Asst. Treasurer.

(Cut) *NATIONAL*
GRAM-O-PHONE CORPORATION.
874 Broadway,
cor 18th St.

NEW YORK, October 26th, 1900.

TO THE TRADE.
IMPORTANT.

Dear Sir:—

You are already aware that our old Gram-o-phone has been abandoned, name and all, and that the Zon-o-phone has been substituted therefor. As conflicting statements are

being circulated by unprincipled parties, in order to deceive and confuse you as to the real status of affairs, we have concluded to give you the facts which cover the relation of the Gram-o-phone to the trade.

They are as follows : Emile Berliner was granted a patent for a Talking Machine called the Gram-o-phone. He sold it to the United States Gram-o-phone Company, and stepped out.

The United States Gram-o-phone Company licensed to the Berliner Gram-o-phone Company of Philadelphia, and stepped out.

The National Gram-o-phone Company succeeded to the Gram-o-phone business, and the Berliner Gram-o-phone Company stepped out.

Judge Lacombe, of the United States Circuit Court of New York, decreed the Gram-o-phone to be an infringement of the Graphophone Patents. This action had been anticipated, however, and there had been developed a new and greatly improved Machine, which was called the Zon-o-phone, and which machine combined joint patents of the Columbia Phonograph Company, American Graphophone Co., Universal Talking Machine Co., and the National Gram-o-phone Corporation.

We thus settled three points. (1). We abandoned the Gram-o-phone, in accordance with the injunction of Judge Lacombe. (2). We substituted in its place the most perfect Talking Machine of any, combining the best features of all. (3). We settled forever the legitimate title of the Zon-o-phone, as the only disc machine that can be legally constructed and sold.

Thereupon the Berliner Gram-o-phone Company attempted to jump back into business. It was promptly enjoined from so doing by the United States Circuit Court of Virginia. Exit Berliner Gram-o-phone Company.

Then the United States Gram-o-phone Company attempted to jump back, and was promptly met by an injunc-

tion of the United States Circuit Court of West Virginia. Exit United States Gram-o-phone Company.

The Berliner Gram-o-phone Company and the United States Gram-o-phone Company then attempted to combine, under the name of the Consolidated Talking Machine Company of America, and were promptly met by an application of stockholders of the Berliner Gram-o-phone Company for a Receiver, and this combination was restrained.

Now comes the Consolidated Talking Machine Company "*of America*" omitted--the name under which Eldridge R. Johnson, the owner of a machine shop in Camden, New Jersey, who manufactured part of the Gram-o-phones up to the time that his business was interfered with by the United States Circuit Court. He is the manufacturer of the discredited Machine which we have abandoned--discredited because of the inferiority of his work which for years we have been obliged to admit, both to our disadvantage and shame.

We do not know what the remaining factor, Mr. Berliner, will try to do, but it is a safe guess as to what will happen to him if he follows the example of the others.

This explanation necessarily involves personal references which we regret. But our first duty is to enlighten our friends, so that they may understand the true situation, and to assure them that we are better prepared than ever to sell them goods, free from any taint of fear of results of patent litigation.

Keep in mind that throughout all this patent litigation the National Gram-o-phone Corporation is free and clear.

Very respectfully,

NATIONAL GRAM-O-PHONE CORPORATION

By O. D. LADow,

Secretary,

H.

CIRCUIT COURT OF THE UNITED STATES

For the Eastern District of Pennsylvania.

 ELDRIDGE R. JOHNSON,
Complainant,

v.

 NATIONAL GRAMOPHONE CORP'N.
Defendant.

October Sessions, 1900,

No. 25.

In Equity.

 "Defendant's Exhibit N."

This cause coming on to be heard on motion for preliminary injunction on bill of complaint and affidavit on behalf of complainant and on answer and affidavits on behalf of defendant, and counsel for the respective parties having been heard, it is hereby ordered, that a Preliminary Injunction issue forthwith in accordance with the prayers of the Bill of Complaint restraining the said defendant, the National Gramophone Corporation, its servants, agents, employees, and all other persons claiming to act under its authority, until final hearing of this cause, from directly or indirectly writing, publishing, declaring, delivering, distributing or circulating, save as hereinafter specified, any circulars, letters, advertisements, warnings or notices whatsoever stating directly, or by indirection, that the gramophone or the talking machines or records such as are manufactured by complainant have been enjoined, or that the complainant has been enjoined from manufacturing or selling gramophones or talking machines or records therefor, or goods thereto pertaining, and from advertising, declaring or publishing in any way that the gramophone has been withdrawn except by the defendant

or others by description or name who have actually discontinued its use or sale or that the defendant's machine is the only legitimate disc talking machine excepting when accompanied with the claim that other machines are infringements of defendant's exclusive rights. This order is not to be construed as preventing the defendant from giving or publishing warning that it claims the gramophones manufactured by others are infringements of its exclusive rights.

GEO. M. DALLAS,

November 13 1900.

Cir. Judge.

And afterwards, to wit, on the 17th day of December, 1900, come the parties aforesaid by their counsel aforesaid, and this cause being called for argument sur motion for preliminary injunction and having been argued by counsel and the Court not being fully advised in the premises takes further time for the consideration of same.

And afterwards, to wit, on the 1st day of March, 1900, come the parties aforesaid by their counsel aforesaid and the Court being fully advised in the premises renders the following opinion, viz.:

IN THE UNITED STATES CIRCUIT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA.

FRANK SEAMAN, Plaintiff,

vs.

ELDRIDGE R. JOHNSON, Defendant.

This is a motion for preliminary injunction. The material allegations of the bill are, that one Emil Berliner was the original and true inventor of certain new and useful improvements in recording and reproducing speech and other sounds, for which letters patent were duly granted to him under the laws of the United States. That the machine made under said patent was designated by the said inventor as a "Gramophone," a word coined and applied by him to his said invention. That under assignments and licenses from the said Berliner, the exclusive right to manufacture and control the said inventions, including the use of the designation "Gramophone," came to the Berliner Gramophone Company, a corporation existing under the laws of the State of Virginia. That thereafter, to wit, on October 6th, 1896, the said Berliner Gramophone Company entered into a certain contract and agreement in writing with the said complainant, by which, among other things, and for considerations therein named, it conferred upon the said complainant the sole and exclusive right, as its licensee, to buy, sell and deal in the "Gramophones" and Gramophone goods, throughout the United States of America, embodying the said Berliner invention, and all improvements therein that may come into the licensor's control, for a period of fifteen years from the date of said agreement. It being understood and agreed that the licensor should manufacture, upon the order of the said licensee, the articles covered by said patents, and sell the same to him exclusively, upon the terms in said agreement stated. That the said complainant, the licensee, should, in consideration of the premises, devote his time and attention exclusively to the advertising and putting upon the market the goods so manufactured by the said Berliner Company, the licensor.

That, in the course of business, under and pursuant to said contract, the said Berliner Gramophone Company employed Edward R. Johnson, the defendant in this suit, to manufacture for the gramophones ordered by said plaintiff under the said contract, and from the date of said contract, until sometime in June, 1900, the said Johnson did manufacture for the said Berliner Gramophone Company, all the gramophones furnished to the said complainant and sold by him under the terms of said agreement. In the month named, the complainant, owing to certain misunderstandings as to his conduct under said contract, and to the alleged refusal of the said Berliner Gramophone Company to longer consider itself bound thereby, or to act under it, filed his bill against the said Berliner Gramophone Company, in the Circuit Court for the Western District of Virginia, praying, among other things, for an injunction preliminary and permanent, to restrain the said defendant from cancelling said agreement, or for refusing to perform the covenants in its part therein contained, or from assigning or transferring its title or interest in the patent rights aforesaid, or from dealing in regard to said patent rights with any other person than the complainant. A bill also was filed in the Circuit Court for the District of West Virginia, against the United States Gramophone Company, the predecessor and licensor of the said Berliner Gramophone Company, in which the same prayers for relief were contained.

In both suits, preliminary injunctions were granted, as prayed for. These preliminary injunctions being in force, practically restraining the cancellation of the said contract of October 6, 1896, and the doing of anything by the defendants in derogation of the rights of Frank Seaman, the plaintiff herein, under said contract, it is in the present motion, in accordance with the prayer of the Bill filed in this cause, asked that a preliminary injunction be issued against the defendant herein, restraining him from manufacturing or dealing in any of the articles which were the subject matter of the said contract of October 6th, 1896. The said Johnson, however, is not a party to that contract, and whatever the Berliner Gramophone Company or the United States Gramophone Company may be obliged under the terms of said contract to do toward restraining him from the acts aforesaid, there is no *nexus* of obligation between the said defendant and the said complainant herein, by reason of said contract. As to said defendant, it is *res inter alios acta*. The present suit is not, and during the argument of this motion it has repeatedly been declared by counsel for complainant not to be, one for infringement of patent rights, but one founded upon special equities alleged to arise out of said contract and the preliminary injunctions in Virginia and West Virginia, temporarily declaring said contract to be still in force. We do not feel at liberty, therefore, at this stage of the case, to issue a preliminary injunction, which would involve

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determination of the question, whether the defendant was so identified with the Berliner Gramophone Company, as to make him practically and equitably a party to the contract of that Company with the complainant herein.

The injunctions referred to having, however, in effect, temporarily declared the contract in question to be in force, the right of the complainant herein to a part of the relief asked, may be considered. As we have said, the suit cannot be considered one for infringement, but it may be considered one to restrain the defendant from unfair competition, by the use of the trade name, "Gramophone," to which, under the contract, complainant is clearly entitled, in the conduct of his business, as exclusive dealer in and seller of the articles to which that name has been applied by the inventor.

It is ordered, therefore, that a preliminary injunction, in the respect and to the extent here indicated, issue in accordance with the fourth aver of the Bill in that behalf.

GEO. GRAY,
Circuit Judge.

Endorsed: 20. Oct., 1900. Seaman vs. Johnson. Opinion sur motion for preliminary injunction. Filed March 1, 1901. Samuel Hall, Clerk.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT
OF PENNSYLVANIA.

FRANK SEAMAN, Complainant,

vs.

ELDRIDGE R. JOHNSON, Defendant.

DECREE.

It is ordered that a preliminary injunction do issue against the defendant in pursuance to prayer four of the complainant's bill of complaint enjoining the defendant, his servants, agents and attorneys from the use of the trade name, "Gramophone," and from selling or offering for sale any goods under the name, style or designation of gramophones or gramophone goods, and from using or employing said name in connection with his business, except in connection with goods bought from the complainant.

(Signed)

GEO. GRAY,
Circuit Judge.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT
OF PENNSYLVANIA.

IN EQUITY.

No. 20. Oct. Sess., 1900.

FRANK SEAMAN, Complainant,

vs.

ELDRIDGE R. JOHNSON, Defendant.

To the Judges of the United States Circuit Court for the Eastern
District of Pennsylvania:

Your petitioner, Eldridge R. Johnson, the defendant in the above cause, feeling himself aggrieved by so much of the interlocutory decree made and entered in the above cause on the fifth day of March, 1901, as decrees that a preliminary injunction do issue against the defendant, his servants, agents and attorneys enjoining them from using the trade name gramophone; petitions the court for an order allowing your petitioner to prosecute an appeal from so much of said decree as decrees as aforesaid to the Honorable the United States Circuit Court of Appeals for the Third Circuit, under and pursuant to the laws of the United States in such cases made and provided, and that an order be made fixing the amount of security which your petitioner shall give and furnish upon such appeal, and that upon the giving of such security, all further proceedings shall be suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals.

And your petitioner will ever pray, etc.

HORACE PETTIT,

HOWARD W. HAYES,

Solicitors of Defendant.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT
OF PENNSYLVANIA.

IN EQUITY.

No. 20. Oct. Sess., 1900.

FRANK SEAMAN, Complainant,

vs.

ELDRIDGE R. JOHNSON, Defendant.

SUR APPEAL OF DEFENDANT FROM INTERLOCUTORY DECREE.

ASSIGNMENTS OF ERRORS.

And now comes the defendant and says that in the record and proceedings in the above entitled cause there is manifest error in this, to wit:

1. The Court below erred in deciding that the complainant is entitled to the use of the trade name "Gramophone" in the conduct of his business.
2. The Court below erred in deciding that the complainant is entitled to the exclusive use of the trade name "Gramophone" in connection with his business.
3. The Court below erred in enjoining the defendant from using the trade name "Gramophone."
4. The Court below erred in ordering that a preliminary injunction issue against the defendant enjoining him from using the trade name "Gramophone" in connection with the sale of gramophones and gramophone goods as prayed for in the fourth prayer of the complainant's bill of complaint.
5. The Court below erred in decree that a preliminary injunction should issue against the defendant.

HORACE PETTIT,
HOWARD W. HAYES,
Solicitors of Defendant.

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT OF PENNSYLVANIA.

IN EQUITY.

No. 20. Oct. Sess., 1900.

FRANK SEAMAN, Complainant,

vs.

ELDRIDGE R. JOHNSON, Defendant.

It is ordered that an appeal to the United States Circuit Court Appeals for the Third Circuit from the interlocutory decree made in the above cause on the seventh day of March, 1901, be, and the same hereby is allowed, and that a certified transcript of the record.

testimony, exhibits, and all proceedings herein be forthwith transmitted to the said United States Circuit Court of Appeals.

It is further ordered that a bond for five hundred dollars be filed as security for damages and costs on appeal.

GEO. GRAY
Circuit Judge

UNITED STATES CIRCUIT COURT, EASTERN DISTRICT
OF PENNSYLVANIA.

IN EQUITY.

No. 20. Oct. Sess., 1900.

FRANK SEAMAN, Complainant,

vs.

ELDRIDGE R. JOHNSON, Defendant.

A decree for a preliminary injunction having been made in the above cause and the defendant having appealed from said decree to the United States Circuit Court of Appeals for the Third Circuit it is ordered that, upon the filing of a bond for twenty-five hundred dollars with sufficient sureties to indemnify the complainant for the payments of all profits and damages recoverable by them on account of any use by the defendant, pending the appeal, of the trade name Gramophone in the manner referred to in said decree, in case said decree shall be affirmed, the issuing of said injunction shall be stayed until the hearing and determination of said appeal.

GEO. GRAY

Endorsed: 20. Oct., 1900. Seaman vs. Johnson. Petition for appeal. Order allowing appeal, assignments of error and order staying injunction. Filed March 7, 1901. Samuel Bell, Clerk.

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GRAY,
Circuit Judge.

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GEO. GRAY.

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Know all men by these presents, that we, Eldridge R. Johnson of the City of Philadelphia, principal, and The American Surety Company of New York, as surety, are held and firmly bound unto Frank Seaman of the City of New York, in the just and full sum of twenty-five hundred dollars, to be paid to the said Frank Seaman, or certain attorney, executors, administrators or assigns, to which payment well and truly to be paid, we bind ourselves, our successors and assigns, jointly and severally by these presents. Sealed with our hands and dated this eighth day of March, A. D. 1901.

Whereas, lately at a session of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in a suit pending in said Court between Frank Seaman, as complainant, and Eldridge R. Johnson, as respondent, No. 20, October Sess., 1900, in Equity, a decretal order was, on the seventh day of March, A. D. 1901, signed and enrolled against the said Eldridge R. Johnson, granting a preliminary injunction against him, enjoining and restraining him, until the further order of the Court, from the use of the trade name "Gramophone," and from selling or offering for sale any goods under the name, style or designation of gramophones or gramophone goods and from using or employing said name in connection with his business, except in connection with goods bought from the complainant.

And whereas, on the seventh day of March, A. D. 1901, the said Eldridge R. Johnson did pray for and obtain an allowance of appeal from the United States Circuit Court of Appeals in and for the Third Circuit, for the purpose of reviewing and reversing said decretal order.

And whereas, upon the allowance of said appeal, the Circuit Court of the United States aforesaid, did make and record on the seventh day of March, 1901, the following order, to wit:

A decree for a preliminary injunction having been made in the above cause and the defendant having appealed from said decree to the United States Circuit Court of Appeals for the Third Circuit, it is ordered that, upon the filing of a bond for twenty-five hundred dollars with sufficient sureties to indemnify the complainant for the payment of all profits and damages recoverable by them on account of any use by the defendant, pending the appeal, of the trade name "Gramophone" in the manner referred to in said decree, in case said decree shall be affirmed, the issuing of said injunction shall be stayed until the hearing and determination of said appeal."

Now the condition of this obligation is such, that if the said Eldridge R. Johnson shall well and truly indemnify and pay to the said Frank Seaman his profits and damages recoverable by him on account of any use by Eldridge R. Johnson, pending the appeal, of the trade name "Gramophone" in the manner referred to in said decree,

in case said decree shall be affirmed by the said Appellate Court then the above obligation to be void; or else to remain in full force and virtue.

Sealed and delivered in the presence of

R. R. Benedict.

ELDRIDGE R. JOHNSON
AMERICAN SURETY CO. OF NEW YORK

By JOHN C. S. DAVIS,
Resident Vice-President.

Attest:

F. H. WILLIAMS,
Resident Ass't. Secretary
(Seal.)

Approved,

RUSSELL DUANE,

Att'y for Complainant.

Approved,

GEO. GRAY,

U. S. Cir. Judge,

Know all men by these presents, That we, Eldridge R. Johnson, as principal, and The American Surety Company of New York, as sureties, are held and firmly bound unto Frank Seaman in the full and just sum of five hundred dollars to be paid to the said Frank Seaman, his certain attorneys, executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals and dated this 8th day of March, in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a session of the Circuit Court of the United States, in and for the Eastern District of Pennsylvania, in a suit depending in said Court, between Frank Seaman, plaintiff, and Eldridge R. Johnson, defendant, a decree was rendered against the said Eldridge R. Johnson, and the said Eldridge R. Johnson having obtained an allowance of appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said Frank Seaman, citing and admonishing him to be and appear at a United States Circuit Court of Appeals for the Third Circuit, to be holden at the City of Philadelphia, within thirty days.

Now, the condition of the above obligation is such, that if the said Eldridge R. Johnson shall prosecute his said appeal to effect, and pay all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of

R. R. Benedict.

ELDRIDGE R. JOHNSON, (Seal.)

AMERICAN SURETY CO. OF NEW YORK, (Seal.)

By JNO. C. S. DAVIS,

Resident Vice-President.

Attest:

F. H. WILLIAMS,

Resident Ass't. Secretary.

(Five cent stamp.)

Approved by

GEO. GRAY,

U. S. Cir. Judge.

Approved,

RUSSELL DUANE,

Att'y. for Complainant.

UNITED STATES OF AMERICA, ss.

President of the United States,

Frank Seaman, Greeting:

You are hereby cited and admonished to be and appear at a United Circuit Court of Appeals for the Third Circuit, to be holden in the City of Philadelphia within thirty days, pursuant to an appeal, from the Clerk's Office of the Circuit Court of the United States, in the District of Pennsylvania, wherein Eldridge R. Johnson is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said appellee's answer, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

In witness whereof, the Honorable George Gray, Judge of the Circuit Court of the United States, this 8th day of March, in the year of our Lord one thousand nine hundred and one.

GEO. GRAY,

Cir. Judge.

Witness accepted.

RUSSELL DUANE,

Att'y. for Appellee.